

Peace in Sudan

So near.. So far..?

Proceedings of the Sudanese National Civic Forum
Dialogue Sessions 2007-2008



Edited by:

Dr. Hassan Abdel Ati

Prof. Galal eIDin Tayeb

2009

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EDGE *for consultancy & research*

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Published by:

National Civic Forum and EDGE for consultancy and research

Flat 15, Kamil Amin Building, Khartoum North, Sudan

p.O. Box 13108, Khartoum

Tel. (+249) 185-338998; Fax (+249) 185-332158

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Registration No:

Printed by:

Cover Design:

Dr. Hassan Abdel Ati

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Dedication

*To all those who worked and sacrificed for peace .. and
are still optimistic and determined to realize it
and*

*To those who have waited too long for a feel of security,
stability and peace and are still waiting ...*

Acknowledgements

This Book is a one result of a collective effort of numerous actors and partners, whose contribution deserves to be acknowledged and commended.

We are grateful to Heinrich Boll Foundation Regional Office in Nairobi for its financial support to the National Civic Forum Dialogue Programme since 2004, a support without which little could have been achieved.

The materials contained in the book reflect, in addition to the efforts of the authors, the great inputs of the NCF members and partners who actively participated in the fora, workshops and debates organized by NCF. They all deserve a big thank you.

Thanks are extended to EDGE staff for their input, of organizing activities, logistical support, follow up and typing the manuscript, especially Ms. Samah Mohamed El Tayeb, Zeinab Ibrahim and Ibrahim Ahmed.

Thanks to all.

The editors
On behalf of NCF

Acronyms

ABC	Abyei Boundary Commission (Report)
AEC	Assessment and Evaluation Commission
ACHPR	The African Charter on Human and Peoples Rights
CPA	Comprehensive Peace Agreement
DPA	Darfur Peace Agreement
DUP	Democratic Unionist Party
EDF	Equatoria Defense Force
ESD	External Self Determination
ESPA	Eastern Sudan Peace Agreement
FFAMC	Fiscal and Financial Allocation and Monitoring Commission
GNU/GoNU	Government of National Unity
GoS	Government of Sudan
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICSS	Interim Constitution of Southern Sudan
IGAD	Inter-Governmental Authority On Development
INC	Interim National Constitution
IPF	IGAD Partners' Forum
JAM	Joint Assessment Mission
JEM	Justice and Equality Movement
JIU	Joint Integrated Units
MDTF	Multi-Donor Trust Fund
MP	Machakos Protocol
NCP	National Congress Party
NDA	National Democratic Alliance
NPA	Nivasha Peace Agreement (CPA)
PCP	Popular Congress Party
PRAC	Protocol on the Resolution of Abyei Conflict
SAF	Sudan Armed Forces
SSDF	Southern Sudan Defense Forces
SD	Self Determination
SECS	Sudanese Environmental Conservation Society
SLA	Sudan liberation Army
SPLA	Sudan People liberation Army
SPLM	Sudan People liberation Movement
SSDF	Southern Sudan Defense Force
U of K	University of Khartoum
UN	United Nations
UNAMIS	United Nations Advanced Mission in Sudan
UNMIS	United Nations Mission in Sudan
UNP	Umma National Party
UNSC	United Nations Security Council
UNSG	United Nations Secretary General

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Introduction

Hassan Abdel Ati and Galal El Din El Tayeb

The book published by the National Civic Forum (NCF) in June 2005 entitled Sudan: The Challenge of Peace and Redressing Marginalization comprised reflections, prior to the signing of the comprehensive Peace Agreement (CPA), alerting the two signatories of Naivasha Protocol and the international supporting actors that just, comprehensive and sustainable peace is too big to be realized by the three actors alone, during the "short" transitional period; and that building social peace requires work at the grass-root level, in which Civil Society Organizations (CSOs), with the wide experience and trust they had acquired during the war period, can be the spear-head. However, for the CSOs to shoulder that role effectively, the two partners have to create the conducive environment by annulling all restrictive legislations encountered by the national organizations, providing support to these organizations, and by genuine actions for the democratic transformation which will make possible the building of a healthy partnership based on full transparency and accountability of all partners.

The book also addressed, in its Introduction, the issue of political, economic and cultural marginalization for being reason or justification of use of weapons and fighting the central government. Most of the paper of that book confirmed that marginalization is a reality and party rooted in the colonial area; that the gap between the peripheries and the centre is widening; that it is linked to ethnic dimensions; and that all these factors have contributed to the instigation and perpetuation of the conflict. But the papers also alerted that the majority of populations were marginalized as evidenced by the excessive consumption (instead of utilization) of the national resources, be it the forests of South Sudan, Kordofan range lands, or the soil of the Gezira Scheme (pp 1-4)¹.

Because the CPA and its signatories and supporters perceived the marginalization problem only in its geographical sense and context and its linkage to armed actions, and because government failed to provide the suitable environment to enable other national actors to support the peace process, the conflict fronts and conflicting parties have increased

¹ See Hassan Abdel Ati (ed.) Sudan: the challenges of peace and redressing marginalization, SOLU Press, 2006.

and the differences between the two signatories recurred to an extent that threatened the CPA itself. The overall result is that peace had not been realized, let alone its comprehensiveness. Thus, the CPA, instead of being an agreement between two partners, started to be implemented as a temporary contract, each of its signatory parties carefully watching the other to make mistakes, both going for instant, temporary and quick-fix management of problems, as if everyone is awaiting impatiently the end of the transitional period which might also be the end of the united Sudan and the ending of the dream for comprehensive and sustainable peace.

Now, after the elapse of more than half of the transitional period, and the national general elections is around the corner, for the realization of democratic transformation, the NCF saw the need to evaluate the implementation of the CPA in the context of its reference documents: Machakos Protocol, Power and Wealth Sharing Protocols, the Government of National Unity (GONU), and Government of South Sudan (GOSS). The NCF organized a number of workshops and fora during the last three years, mostly pertaining to the assessment of the CPA with the objective of allowing all stakeholders to determine the areas of failure and its causes and to identify the effective mechanisms to redress the failures and enhance the honest and effective implementation of the Agreement. Some of the papers presented in those workshops and fora are included in this publication, and obviously each represents the viewpoint of its author, and not of the NCF.

While most of the papers deal directly with the CPA and its implementation, the contributions by Dr. Asma Hussein and Ustaz Kamal El-Gizouli address two central issues pertaining to the conflict as a whole and its repercussions. The contribution of Dr. Asma Hussein focuses on the transformation of political conflict into an ethnic one, rendering it too complicated to be contained by the narrow prescriptions of the power and wealth sharing. Ustaz Kamal El-Gizouli's paper, on the other hand, addressed the language as cultural constituent which was not given its due consideration in the CPA, focusing on how the reaction to cultural authoritarian supremacy or hegemony may become counter supremacy which causes more damage to the reactor than to the actor, to the extent of contributing to surrendering and/or annihilation of own identity. Dr Abdel Basit Saeed's paper provides a concentrated summary of the Abyei issue, the most contentious issue and cause of tensions between the two CPA signatories, and the issue that will be one of the decisive factors on the future of Sudan (unity or cessation) when the referendum on self determination is organized for the peoples of southern

Sudan in 2011. The choice of Abyei, of all contentious issues, stems from its cultural, political and economic importance as it is an area of cultural interaction of Arab/African, Muslim/Christian groups and a mixture of agricultural and pastoral economies, represented by the Dinka-Ngok and Misseriya tribes. And although some frictions and conflicts used to occur in the past, the traditional tribal mechanisms were capable of settling them and of providing a model for peaceful coexistence in the area. Unfortunately, the discovery of oil in the area made it a battleground, both politically and militarily, between the GoS led by the NCP and the GoSS led by the SPLM, who respectively fostered the Misseriya and Dinka to address the differences over the boundary of the area and whether it is part of the North or the South.

The rest of the papers, as mentioned above, deal on the direct assessment of the CPA and its implementation. These papers regrettably do not include a direct assessment by the Sudanese People Liberation Movement (SPLM) despite the active participation of some of its members in the workshops and fora. The papers addressed with variations on coverage, argumentation and assessment of implementation the following issue:

1. The reference documents of the CPA
2. The implemented provisions of the CPA
3. The in-built weaknesses and failures in the CPA implementation process, and
4. Rescue proposals for implementation and achievement of the CPA objectives

The CPA and its Protocols strived at setting the political, security and economic arrangements during the transitional period and at furnishing an environment conducive to genuine democratic transformation. They specified the four levels of government, how they would be shared, and their powers and responsibilities, notably the Federal Government, the Government of South Sudan, the administration of the three areas of Abyei, South Kordofan and Blue Nile State, the State Governments, the administration of the National Capital, together with wealth (Land and oil revenues) sharing, and the security arrangements, i.e. positioning of the forces of the two partners and the National Security Unit. Furthermore, assurance was made for commitment to human rights declared in international declarations, protocols and agreements, and to the right of the people of South Sudan to self-determination in a general referendum to be organized at the end of the transitional period (2011)

while all actors should work to make the unity of Sudan an attractive option.

The main accomplishments in CPA implementation include: the signing of the Transitional Constitution, though the signed version is different from the one submitted by the National Committee for the constitution; the formation of the Presidency, government institutions at the all levels, the legislative bodies, the judiciary, the two banking systems and most of the commissions and special Funds. The security arrangements have also been put in place, and the wealth (petroleum revenue) and power have been shared according to the specified percentages. It is worth noting that power sharing has consolidated the hegemony of National Congress Party through having a mechanical majority (52%) in the Central Government (GoNU) and in the National Assembly as well as in the State governments and State legislative Assemblies in north Sudan. Likewise the SPLM has a hegemonic control over the Government and the Legislative Assembly of South Sudan.

Most of the papers contend that the CPA encounters structural weaknesses and interest-guided bias in implementation, particularly with regards to the issues of democratic transformation, building national unity and sustainability of comprehensive peace. The major problems and failures include:

1. The exclusion of the political and civil forces, which constitute the majority, from participation in the CPA and as such it only reflects the viewpoints of the two partners - who are a minority - for the solution of a national problem, in addition to their monopoly of all executive and legislative powers during the transitional period.
2. The CPA has been based on the assumption that the problem is only between the North and South, that its resolution would realize comprehensive peace in the country as a whole and that it would constitute a model and a framework for the solution of other conflicts if they occur. It is true that the CPA has succeeded in ending the war in the South, but it is equally true that it has contributed, even if indirectly, in the flaring/heating up of the armed conflicts in Darfur and Eastern Sudan because its signature sent the message to rebel groups that armed struggle is the most effective mechanism to compel the government negotiate with them their legitimate demands. Furthermore, the negotiations of Darfur problem and signing of Abuja Agreement have not only failed to end the war,

but, instead, it contributed to its escalation because the fruit reaped by the South from the CPA have raised the ceiling of the expectations of the Darfurian armed groups and their demands collided with CPA lack of provision for compensation and the Interim Constitution statement of the number of States, which prevented the demand for one Darfur state.

3. The deep cleavage and differences in the nature and visions of the two partners. While the National Congress Party is an Islamic, religious and Arab-oriented organization, the SPLM is secular and African-oriented. These differences have been reflected in opposite outlooks and actions, which threaten the unity of Sudan. The NCF strives to impose an Arabic culture and its unilateral Islamic viewpoints on the African and non-muslim groups, while the SPLM struggles to resist this trend but, sometimes in no less authoritarian manner. A good example is provided by the case from the Nuba Mountains, which is predominantly African in population, where the SPLM, in order to resist the Islamization and Arabization trend led by the NCF, introduced the English language to replace the Arabic language in schools in the areas under its control, and to recruit teachers from abroad although Arabic is the communication language for the vast majority of the local populations. Both trends do not help in rendering voluntary unity attractive. In another context, the Arab/African or North/South dichotomy has been reflected in addressing the problem of the oil-rich area of Abyei. The NCP and the Muslim and Northern Misseriya tribe rejected the Experts Report regarding the boundaries of the area, while the SPLM and the Non-Muslim and African Dinka-Njok tribe accepted the report. This indicates that each of the two partners intends to keep this oil-rich area within the part of Sudan which it claims to represent in case referendum resulted in disunity of Sudan. This dispute culminated in May 2008 in armed confrontation between the two partners, which has endangered the whole CPA.
4. The NCP disinterest, and is therefore, unwillingness to implement the CPA while the SPLM lacks the sufficient capabilities to force implementation. The NCP leaders intended, since the first day of their coup against democracy, to consolidate their political power and to control the national economy and resources. They have established an extensive and interlinked network of interests which they will not surrender, let go or compromise and this explains why, despite the mounting internal and external pressures, they have

continued to play delaying tactics and manoeuvre around some serious provisions of the CPA: many of the laws which restrict freedoms and rights, particularly the freedom of thought, expression and organization, are still enforced despite their contradiction with the Transitional Constitution; the persistent continuation of the same security forces and apparatus; the militias have not been dismantled; the Abyei issue is still awaiting settlement; the tight monopoly over public mass media and the sluggish preparations and arrangements for the national general elections, among others. On the other side, the SPLA has focused on military action since its foundation, and has built its image and weight on the military struggle and it is not feasible to transform itself, during the short transitional period, into a political party based on a clear strategy, a comprehensive programme and a democratic, integrated organizational structure; and it still lacks the capacity necessary to confront a partner characterized by intelligence, strict organization and long experience.

5. The limited role of the international community: despite the fact that the implementation of the CPA is primarily the responsibility of the Sudanese political forces, especially the two partners, the international community, represented by the United Nations and the Greater Powers, played an important role in reaching the agreement and have signed as a witnesses and a guarantor to implementation. The international community has not played, sufficiently enough, its role in the provision of the much needed financial and technical support or in following up the Agreement implementation process. Some of the reasons could be the internal obstacles and problems mentioned in the book, while other reasons may be the engagement of the international community is some other international problems like the war on terror, the wars in Iraq and Afghanistan and the Palestinian- Israeli conflict.

Thus, in short, it can be said that: (a) the CPA pace of implementation is very slow in all the fronts where there is no direct interest or benefit to influential leadership, particularly in issue such as democratic transformation; (b) although the CPA has stopped the war in the south, it has contributed to the escalation of others (Darfur and eastern Sudan) and the flaring of new ones in Kordofan and northern Sudan; (c) Sudanese people in both southern and northern Sudan are yet to feel the peace dividend in their development, livelihood, security or stability; and (d) civil society organizations so far did not, or were not given the space to, contribute to enhancing the CPA implementation to its anticipated

end, the thing that precipitated a sense of despair and apathy, sometimes, despite the eminent threats of disintegration, divisions and *somalization* that role over the country.

Almost all the papers have come to the conclusion that the way the CPA has thus far been implemented and the delaying tactics will not lead to the actualization of some of its main objectives, including the democratic transformation, sustainable comprehensive peace, and the unity of the country. While most of the suggestions and recommendations made by contributors pertain to the CPA in general, some relate to more specific issues. For example, on the issue of Abyei area, Dr. Abdel Basit Saeed suggested the adoption of a complementary interpretation for the protocol to assert that the Misiriya are full residents of Abyei area with rights of ownership, and the declaration of the area along both sides of Bahr- El Arab as an arms-free zone, together with the establishment of some development projects. Ustaz Kamal El- Gizouli, after his in-depth analysis of the issue of the cultural authoritarian supremacy and the counter-supremacy in the Nuba Mountains and its likelihood of making voluntary unity unattractive, calls for the enforcement of the CPA's assurance that the Sudan a multi-cultural, multi-religions and multi-ethnic country because the democratic interaction of these multiplicities is the thing that will help in rescuing the unity of the country.

While the conclusions of the papers by Dr. Wani Tombe and Mariam El Sadig AlMahdi focused on addressing the structural problems and limitations of the CPA, the suggestions included in the other papers focus on the necessity to address the sluggishness and failures in its implementation, together with the execution of some development projects, especially in the marginalized areas to ameliorate the frustration and despair of the people and to make them reap some fruits of the Agreement. This requires the transformation of the CPA from a bilateral agreement between two partners to an agreement of the whole society through convening a national conference for all political forces, civil society organizations, armed groups, local leaders and public figures to agree on capable mechanisms to implement the Agreement, and form an inclusive government of national unity to accomplish the requirements of comprehensive and sustainable peace, the unity of Sudan, democratic transformation and geographically and socially equitable development.

In-built Weaknesses Hampering the Implementation of the Comprehensive Peace Agreement (CPA)

Dr. Wani Tombe Loko

1. Introduction:

The signing of the comprehensive Peace Agreement (the CPA) was a tremendous relief for the majority of the Sudanese peoples, especially in the southern Sudan who consider the CPA as the political, social, cultural, and technological panacea for their many ills that continue to undermine the integrity and dignity of this tortured nation, the Sudan. Above all, the CPA is considered as the socio-political instrument that shall be used by the Sudanese people to pacify themselves and to reintegrate themselves into the various peace loving nations of the world. The CPA is also considered by the Sudanese peoples as the harbinger for universal peace culture in the Sudan, geographical zones notwithstanding. It is also ubiquitous that the CPA is being presented to the Sudanese peoples as the political template for the amelioration of all actual and potential economic, social, political, cultural, moral, religious, and military contradictions and conflicts. The CPA arrived at a time when the Sudan as a country had suffered a great deal; the peoples of the Sudan as human persons have suffered untold agonies and humiliation; and the image of the Sudan as a people and an abstract state suffered very much. However, the partisan letter and spirit of the CPA, as opposed to expected nationalistic locations notwithstanding. The CPA is beginning to be mocked as an agreement that is very privy to the National Congress Party (the NCP: as the senior partner in this partnership), and the Sudan Peoples Liberation Movement (SPLM), and the Sudan Peoples' Liberation Army (SPLA), (hereinafter SPLM/A), it is junior partner in this political partnership¹.

When speaking about in-built weakness of the CPA, it can be prudently argued that, the in-built and inherent weakness of the CPA cannot be reasonably and practically extricated and humanely isolated from various human weakness of those who masterminded the various and procedural article and section of this over exaggerated political agreement, the NCP and the SPLM/A, the rather exclusionist and extremely privy nature of the CPA, especially in the realm of power- sharing, expressly and implicitly depicts the political morality of the main actors and creators of

¹ For example see Sudan's Comprehensive Peace Agreement: The Long Road Ahead, International crisis Group, African Report, No. 106, 31 March 2006

the CPA as it were. This exclusionist and privy nature of the CPA is profoundly felt in southern Sudan than in the other geographical zones of the Sudan. This may be due to the fact that, the politics of cruelty, hate, torture, isolation, marginalization' pillage, plunder' rap, murder and all heinous human conducts masquerading as political programme were more felt and endured by the peoples of southern Sudan than anywhere else in the entire Sudan¹. It can be strongly argued that this general political and social disenchantment with the CPA in southern Sudan is a function of various in-built weakness of the CPA from its inception to its final signature and publication as the panacea for all Sudanese political and other cures.

Within the remit of power-sharing as stipulated in the CPA, it can be glaringly discerned that the percentage² approach adopted in the CPA, by the creators of the CPA and their international supporters, undermined the cardinal spirit of the entire exercise, and it is one of the most crippling and dangerous in-built weakness of the CPA³. It engendered the legalization of discrimination, contrary to many international and legal instruments, the institutionalization of marginalization in society, contrary to all adumbrated political slogan of New Sudan, inclusivity and such like; the politicization of the civil service in the entire country, and most dangerously in the southern Sudan, contrary to all established norms of political civil service; and the legalization and institutionalization of ascription of values as the modus operandi in society, as opposed to the entrenchment, legalization and institutionalization of the principle of meritocracy as the norm for the

¹ The people of southern Sudan naively but in good faith, embraced the CPA as the ultimate solution to their political and cultural plight, only to discover that those who came to town as their liberators turned to more worse than the hitherto hated enemy represented in the Sudanese abstract state. The feeling of betrayal vis-à-vis the peoples of southern Sudan is very ubiquitous in Greater Equatoria, Greater Upper Nile and Greater Bahr El Ghazal

² Refer to section 2.5.5 (a, b, c, and d) of the Protocol on Power Sharing signed in Nivasha on May 26th, 2004, for the composition of the Government of National Unity and section 3.6.4 subsections 1, 2 and 3) for the composition of the Government of southern Sudan. The reader should be able to discern the recipe for disaster as regards the efficient and efficacious implementation of the CPA.

³ For example see Khartoum Monitor Daily, Vol. 6, issue No 1026, 511012006, in which appeared two articles one decrying the magnitude of corruption in Unity State in southern Sudan and the other lamenting about the marginalization of Balanda people by the Government of southern Sudan. All these are vestiges of in-built weaknesses of the CPA within the remit of the percentage approach selfishly and recklessly adopted by the creators of the CPA.

reconstruction of the Sudan, politically, Socially, culturally, religiously, economically, financially and technologically.

The universal and ubiquitous ambiguity of many articles and sections of the CPA means laborious purposive interpretation of the CPA; subjective interpretation of the CPA; the disappearance of objectivity to extent that, an objective political social; economic and cultural analyst cannot reach a reasonable conclusion after reading the entire CPA. It is reasonably impossible to defend the CPA as a living document. The CPA is dangerously silent as to what happened after the period: should the Sudan choose to stay united within a united Sudan. The CPA dangerously assumes that, the southern Sudanese are united by social norms, cultural norms, economic values, political aspiration, and even religious believes. This is a dangerous in-built weakness of the CPA; it is now frustrating the efficient implementation of the CPA in southern Sudan¹. The CPA dangerously and recklessly legalized and institutionalized the formation and the sustenance of a partisan army in southern Sudan that owes its allegiance to a political party rather than to the people represented in the state. The CPA is a dangerously emotional document that appears to survive on raw emotions devoid of inherent objective mechanism for its survival.

2. The Machakos Protocol:

The Machokos Protocol² (the MP) is a mixture of emotional statements and some rudiments of semi legal principles (where principles mean basic rules, laws, or doctrines). For example, (section 1.5 of Part A) describes how the Sudanese people share common heritage and aspirations. This is a very sweeping statement. It is dangerously misleading and full of reductionism. It is extremely flattering and lacks the seriousness and objectivity of a statement that aims at enunciating a principle that ought to be applied. It cannot even become the foundation for the enunciation of principles to be followed and applied in human society tormented by non-international armed conflicts saturate in racial, religious, ethnic, and political mistrust and centuries of suspicion. Surely the Sudanese share common geographical location recognized within the

¹ Any honest and sincere human person can see the politics of cruelty and hate in maximum practice in southern Sudan. The unnecessary inter and intra tribal warfare in southern Sudan is an excellent example. The institutionalization of tribalism and nepotism as the most official mode of recruitment of elites in civil service and other government institutions is an example of a dangerously divided society.....

² Signed in Machakos, Kenya on July 20th 2002, in which part A talks about agreed principles, part B the transitional process and part C the Structure of Government.

remit of international law as the country called the Sudan. However, this country called the Sudan is populated by various human groups with varying socio-cultural traditions, religions and believes. It is therefore logical to argue that, these variations have led to the emergence of myriad of human sentimentalities that have concretized into custom and value systems that are not necessarily homogenous to the extent that one can confidently talk of a people in the Sudan with common heritage and aspirations. The CPA appears to impose a superficial political paradigm to turn an *is* situation into an *ought* situation. That is, *the situation is* that the Sudanese peoples are heterogeneous in all their characteristics. This is a natural existing fact in the Sudan to-day. Therefore, the politicization of the *is* situation into an *ought* situation amounts to a wishful political thinking that has affected the formulation of the MP in particular and the CPA in general as the ultimate aggregate of all the relevant protocols therein.

"Part B" of the MP that talks about the transitional process is equally contradictory and extremely spirational as opposed to realistic and objective¹. The MP appears to have been written in total and almost reckless disregard to the actual situation on the ground in both southern and northern Sudan. In southern Sudan for example, there are many southern Sudanese women who got married to northern Sudanese during the period of the non- international armed conflict there. Some government authorities in the southern Sudan are in record, whereby they expressly frustrated the continuation of certain marriages between some southern Sudanese women and northern Sudanese men, under the pretext of non-fulfillment of certain customary marriage rituals. Who are these government official to intervene in the private affairs of Sudanese citizens notwithstanding the fact that the parties to these marriages come from different cultural, social, and religious background? It is submitted that the various senior officials and politicians within the remit of the government of southern Sudan (GoSS), and who intervene to frustrate hitherto happy marriages under the veil of the CPA are actually violating the human rights of those so affected by such interventions. These rights are strongly protected by the International Covenant on Civil and Political Rights (ICCPR). It can be argued with impunity that these acts and omissions of the various GoSS senior officials and politicians that interfere with peoples private affairs within the institution of marriage, amounts to dangerous undermining of the CPA and its beneficial

¹ For example, section 2.6.4 maintains that "All family matters including marriage, divorce, inheritance, succession and affiliation may be governed by the personal laws (*including shariaa or other religious laws, customs and traditions*) of those concerned.

implementation. All these encumbrances are brought upon the peoples of southern Sudan by the inherent weakness in the formulation of the MP and the CPA in general.

The MP appears to have been written in hurry¹, and to appease² the parties who were under enormous national, regional, and international pressures to produce an agreement to end the non-international armed conflict that has gone on for nearly two decades and has literally destroyed the Sudanese economy and undermined the social system in the southern Sudan. Sections 2.4.2 and 2.5 respectively are extremely contradictory and appear to negate one another. How can section 2.4.2 of the MP strive to make the unity of the Sudan attractive to the southern Sudanese, while at the same time, section 2.5 of the MP encourages the southern Sudanese to vote for either the unity or the division of the Sudanese into two countries? At any rate, what is the meaning of, "... voting to adopt the system of government established under the Peace Agreement..."?, (see section 2.5 of the MP). It is obvious that the system established in the Sudan by the CPA is a federal system of government where all the legislators and the executives are appointed, and where, the main two parties to the CPA have the lion-share of all legislative, judicial, and executive such those created by sections 2.4.2 and 2.5 of the MP above have contributed to difficulties in the implementation of the CPA. This has made open demand for the unification of the Sudan near a capital punishment offence in some quarters in southern Sudan, while open demand for secession of the northern Sudan an unacceptable political opinion within some political circles in the northern Sudan. The result of such self deceit is the lack of transparency in the implementation of the CPA and which in turn does not nurture the growth of trust and confidence as among the hitherto belligerent parties to the ended non-international armed conflict, brought about the emotional CPA.

¹ Section 2.4.2 maintains that "The parties will work with the Commission during the Interim Period with a view to improving the institutions and arrangements created under the agreement and make the unity of Sudan attractive to the people of southern Sudan".

² Compare section 2.4.2 above with section 2.5 of the MP which stipulates that "At the end of the six-year interim period there will be an internationally monitored referendum, organized jointly by the GoS and the SPLA/M for the people of South Sudan to confirm the unity of Sudan by voting to adopt the system of government established under the Peace agreement or to vote for secession"

Critical analysis of section 2.6 of the MP¹ reveals several unanswered questions. First of all, this section does not define the mode of refraining from any of unilateral revocation of the CPA. Does the section imply press statements as species of unilateral revocation of the CPA? Or, sheer lack of cooperation? Or, the introduction of any other modus operandi by any of the parties to the agreement? Or, ubiquitous corrupt practice including tribalism, nepotism, racism, and sectarianism? Or, willful disregard of particular articles, or what? If all of the above are valid speculations, since we are denied the benefit of objective test or revocation of the CPA by the MP, then, in fact and at law, all of the above have taken place since the signing of the CPA. Should the Sudanese people then assume that the CPA is actually revoked and we are only operating on the goodwill of the parties to the CPA or what? It is the existence of such linguistic indeterminacy that produces semantic interpretation of the CPA to the detriment of its implementation.

3. The Demand for the Right of Self-Determination for the Southern Sudanese as Consequences of the conflict²:

Self-Determination is a fundamental legal and normative principle, entrenched by the United Nations (UN) Charter 1945³, and amplified by the International Covenant on Civil and Political Rights (ICCPR) 1966⁴, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966⁵ respectively. The right of SD⁶, within international law (IL), also involves the analyses of various economic and financial issues⁷, jurisprudential issues⁸, territorial and geographical issues⁹, and

¹ Section 2.6 of the MP says that, "the parties shall refrain from unilateral revocation of the peace Agreement".

² See MP, section 1.3, under the heading, "the right to self-determination for the people of south Sudan."

³ See Article 1 (2) which maintains that, the purpose of the UN are 'to develop friendly relations and take other appropriate measures to strength universal peace'

⁴ See Article 1 (1) (2) and (3). The ICCPR entered into force on 23rd March 1976, General Assembly Resolution 2200A (XXI), UN doc. A/6316 (1966)

⁵ See Articles 1 (1) (2) and (3). See general Assembly Resolution 2200A (XXI) of 16th December 1966, UN doc. A /6316 (1966), the ICESCR entered into force on 3rd January 1976, in accordance with Article 27.

⁶ See Higgins, R., (2000), Problems and Process International Law and How We Use It, PP.111-128; Shaw, M.N; (1999), International Law (4th Edition), PP. 144-146; 354-361; and 795-797; and Malanczuk, P., (2001), Akehurst's Modern Introduction to International Law (7th Revised Edition), PP.306-341.

⁷ See Dixon, M., McCorquodal, R., (2003), Cases and Material on International Law, (4th Edition) P. 226, Notes 1-4.

⁸ See Namibia Case [1971] ICJ Rep 16; and the Western Sahara Case [1975] ICJ 12.

⁹ General Assembly Resolution 1541 (XV), GAOR, 15th Session, Sup. 16,29, 15th December 1960.

socio-cultural issues¹. SD is such an encompassing principle and doctrine², and it has been in use for many years³. SD was heavily relied on during the First World War⁴, and its precise meaning is very elusive⁵, and vague at time⁶. The political and legal essence of SD is about the freedom of choice and positive participation by a people (s) in the enjoyment of all goods and services, which emanate from the fruits of their legitimate human and natural resources, and their territory⁷. The IC has time and again reiterated that the right of SD is only meant for a group of human persons (peoples),⁸ and is only exercisable by "peoples"⁹. To benefit from this right, the human persons must first qualify as "people"¹⁰. It can be argued that "peoples" means the whole human population located in determinate geographical space, and which must be under a colonial rule (the dogmatic view), or in a state which governance is not in accordance with democratic norms (the human rights approach view)¹¹, and where the "people" are not allowed to

¹ See McCorquodale, R., 'self-Determination: a Human Rights Approach', in www.eleves.ens.fr/home/blondeel/law.html; P. 1 of 23

² See Dixon, M., and McCorquodale, R., *OP.Cit.*, P. 213. Articles 1 (2) and 73 (a)(b)(c)(d) and (e) of the UN Charter.

³ See Smith, R.K.M., (2003), *Textbook on Human Rights*, P.269.

⁴ 'The statement of war aims made on 8th January 1918 came to be known as the 14 points' (see O'Brien, J., (2001), *International Law*, P.162.

⁵ See Higgins, R., *Op. Cit.*, P. 111

⁶ Hannum, H., 'Self-determination as a Human Right'. In Claude, R., and Western, B., (eds) *Human Rights in The World Community- Issues and Actions*. PP. 175-184

⁷ See Cassese, A., (2001), *International Law*, P. 105

⁸ According to the, 'Final Report and Recommendations of an International Meeting of Experts on the Further to the Concept of the Right of the Peoples for UNESCO, 22nd February 1990, SNS-89/CONF.602/7; a people for the purposes of the right in international law, including the right to self-determination, has the following characteristics: [a] (i) A common historical tradition; (ii) Racial or ethnic identity; (iii) Cultural homogeneity; (iv) Linguistic Unity; (v) Religious or ideological affinity; (iv) Territorial connection, (vii) Common economic life; [b] The group must be of certain number who need not be large (e.g. the people of micro States) but must be more than a mere association of individuals within a State; [c] The group as a whole must have the will to be identified as a group of the consciousness of being a people-allowing that group or some members of such groups, though sharing the foregoing characteristics, may not have the will or consciousness; [d] Possibly the group must have institutions for other means of expressing its common characteristics and will for identity'. (See Dixon, M., and McCorquodale, R., (2003), *Case and Materials on International Law* (4th Edition). P217).

⁹ Smith, R.K.M., *Op. Cit.*, P.269

¹⁰ See Anaya, S.J, (1996). *Indigenous Peoples In international Law*, P.76

¹¹ . See McConquodale, R., *OP. Cit.*, in www.eleves.ens.fr/home/law.html , PP. 4 - 7 of 23.

participate in the decision-making processes in their state¹, and where their human rights are continuously violated. The word "peoples"² is much politicized and its objective definition is unattainable³. States have always, in subjective fashion, manipulated the threshold for qualifying as "peoples", and therefore, excluded minority groups from the benefits of SD⁴. Referring to the issues of SD within the context of southern Sudan, the leader of the Sudanese government delegation to one of the peace sessions within the Inter-Governmental Authority On Development (IGAD) framework said that, "..... Self-determination, the fate of Sudan has been determined way back in 1956, when the Sudan attained independence. The Southern part of the country which had deliberately been underdeveloped culturally and isolated by the British, has never been dealt with as a political entity by any regional or international authority separation of Southern Sudan is bound to elicit a chain reaction, affecting the rest of Africa..." (sic).⁵ It is discernible that this Sudanese Government official was referring to the interpretation and understanding of the right of SD within the framework in which, SD is construed as the establishment of a politically independent and sovereign state, and recognized as such by other nations within the UN system. However, the general principle of SD is construed as meaning both External Self Determination (ESD) and Internal Self Determination (ISD)⁶. It is true that, the right of ESD is historically, and for cultural, social, legal and political reasons, revered for colonized people, who are in continuous struggle to emancipate themselves and to institute their own independent sovereign state, either in association⁷ with or integration⁸ with other independent and sovereign State⁹. While this paper has taken full cognizance of the ubiquitous legal and political

¹ See Myntti, K., 'National Minorities, Indigenous Peoples and Various Modes of Political Participation', in Horn, F., (1996), *Minorities and their Right of Political Participation*, P.16-26

² See Thornberry, P., *Op. C.t.*, P15

³ See Anaya, S.J., (1996). *Indigenous Peoples In international Law*, P.84

⁴ See Thornberry, P., *Op. C.t.*, P. 13

⁵ Speech of Dr. G.S El Atabani, the leader of the Sudan Government delegation to the fourth session of the IGAD peaces talks in Nairobi, on September 22nd 1994. (Quoted in Nyaba, P.A., (1997) *Op. cit.*, PP 158-159

⁶ See MacCorquodale, R., *OP. Cit.*, at www.eleves.ens.fr/home/blondeel/law.html , P 6

⁷ e.g. Gibraltar vis-à-vis the United Kingdom; Puerto Rico vis-à-vis the United States'. (See Higgins, R., *Op. cit.*, P. 114, n.4)

⁸ E.g. The integration of the North Cameroon into Nigeria, and the Southern Cameroon into Cameroon'. (Higgins, R., *Op. Cit.*, P114, n.5).

⁹ See McConquodal, R., *OP. Cit.*, at www.eleves.ens.fr/home/blondeel/law.html , P. 3 of 23

tendencies¹, which restrict the right of SD in general to colonial territories and peoples, however, there are instances which amplify the fact that, the right of SD, can be exercised within independent sovereign States², where substantial section (s) of the peoples within the State are permanently excluded from constitutional benefits, and where their HRs are continuously and violently violated³. However, this important evidence does not negate the difficulty within IL, whereby minority groups such as the southern Sudanese, have no locus standi in international tribunal to claim the right of ESD⁴. For example, within the remit of the ICCPR 1966, and its First Optional Protocol (OPI), article 1 of the ICCPR, which is on SD and thus 'peoples' right, is outside the jurisdiction of the Human Rights Committee (HRC). However, critical reading, of the case law in this area reveals the primacy of 'peoples'⁵ and 'territory'⁶ as the sine qua non of the right of SD. In *Re Secession of Quebec Case*⁷, it was ubiquitously confirmed that, possession of particular religious, ethnic, linguistic and cultural characteristics are not definitive sine qua non for SD within the remit of IL. SD/ESD is not

¹ In the post LN era, the elucidation of the defining factors. (See Smith, R.K.M., *Op. Cit.*, P272). The right of, SD/ ESD in non-colonial settings is riddled with inherent difficulties, and it is argued that, ... if every ethnic, religious or linguistic group claimed Statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become much more difficult to achieve'. (See the Statement of the former UN Secretary General, Mr. Boutros- Ghali, quoted in Robert, A., and Kingsbury, B., (eds) (1993), *United Nations Divided*).

² The secession of Bangladesh from Pakistan is an example of a 'successful' post-colonial self-determination. (See Crawford, J., (1979), *The Creation of states in International Law*).

³ See McConquodale, R., *Op. Cit.*, at www.eleves.ens.fr/home/blondeel/law.html, P 2 of 23

⁴ See Thornberry, P., *Op. Cit.*, PP.13-14

⁵ See the eloquent separate opinion of Judge Dillard, in the *Western Sahara Case*. ICJ Rep.1975, 12

⁶ See Higgins, R., 'Judge Dillard and the Right to Self-determination' (1983) 23 *Virginia Journal of International Law* 387

⁷ The issues of the Secession Quebec from Canada came before the Canadian Supreme Court for decision in 1998: *Re Secession of Quebec* [1998] 2 SCR 21. The court was asked to rule whether International Law recognized a right of SD, which could legally allow Quebec to breakaway from Canada. The Court held that the people of Quebec possess the right to SD' (see para.114); it also held that 'much of the people of Quebec satisfied the criteria for determining what is a 'people', they possessed a common language and cultural for example' (see para. 125); the Court then distinguished between internal and external SD: in which the former is the normal process of development in political terms within a State, and the latter can only be invoked in extreme circumstances, (see para. 126); and the Court then went to say that Canada is a sovereign and independent State conducting itself in compliance with the principle equal rights and self-determination of peoples' (see para. 186), and thus, the Quebec had no recognized right to secede. (Also see Dixon, M., and McCorquodale, R., (2003), *Case and Materials on International Law* (4th Edition), PP. 224-226).

available where the group concerned already enjoy ISD. In the case of southern Sudan, the prevalence of multi linguistic, and cultural heterogeneity may not be the strongest reason for the claim of ESD by the peoples there¹. The Quebecois lost their case because they '... Were accorded internal self-determination'². Whereas, in southern Sudan, there is ubiquitous absence of ISD, but a very volatile evidence of extremely hostile group vis-à-vis relationship among them. It is very difficult to conclude that, because there is gross violation of HPs and FFs of the people (within peoples) in southern Sudan, they must automatically be entitled to ESD without careful analyses of the internal socio-cultural and political mechanism that can guarantee a peaceful sovereign State. In the *Katanges Peoples Congress vs Zaire*³ the African Commission of Human Rights maintained that, ESD is available if there was no ISD for the group concerned⁴. In these types of circumstances, the territorial integrity of the State shall not be the overriding factor⁵. In the case of southern Sudan, the 1972 Accord was an important process and genesis for a potential ISD for the peoples. It is extremely difficult to justify the allegation that the southern Sudanese were not partly to blame for the collapse of the 1972 Accord⁶. If the southern Sudanese continue to maintain that, they were, (and are being) manipulated by the northern politicians, and they were, (and are) not aware of political southern Sudanese intellectuals and politicians, who must be asked? If they cannot run a regional autonomy, with less demanding international and regional obligations and such like, how can they be trusted to run an independent State, with all the myriads of military, economic, financial, social/cultural, diplomatic etc obligations? These questions must asked, because the right of ESD is not for political elites, but, a serious commitment with enormous implications for the millions of southern Sudanese and others beyond the boundaries of the Sudan⁷. In *Gillot v*

¹ See MacCorquodal, R., Op. Cit, at www.elecs.enes.fr/home/blome/blondee/law.html; P7

² See Smith, R.K.M., Op. Cit., 276.

³ Communication 75/92, 8th AAR (1995).

⁴ See Viljoen, F., 'Admissibility Under the African Charter', in Evans, M., and Murray, R., (eds.) (2002), *The African Charter On Human and Peoples Rights-The System in Practice, 1986-2000*, P.69.

⁵ See McCorquodal, R., Op. Cit., at www.elves.ens.fr/home/blondee/law.html; P13

⁶ See General Nyaba, P.A., Op. Cit

⁷ Generally see the powerful arguments of Professor McCorquodale in which he argued that SD/ESD must be exercised with the right of others in mind, and these others should also include the IC, and general world peace and security (see article at www.elves.fr/home/blondeel/law.html).

France¹, the issue was on election in French New Caledonia, based on the principle of SD. The HRC found that, the elections were compatible with articles 25 and 26 of the ICCPR, and that, 'although it (the HRC) does not have the competence under the OPI to consider communications alleging violation of the right to self-determination protected in article 1... it may take article 1 in account in interpretation of article 25 of the ICCPR². The HRC is at pains not to be seen as though it is indulging in an exercise, which may be interpreted by States as permission for others to claim the right of SD through the ICCPR and its OPI³. In southern Sudan, the peoples had several opportunities to elect their representatives for both regional and national assemblies between 1972 and 1986⁴. The political elites in southern Sudan made sure that the same clique of groups and in ancestral, mythical, parochial and tribal politics that they lost all golden opportunities for entrenching genuine praxis for legitimate ISD. The southern Sudanese issue is one of a multiple minorities within a country, created out of a multiplicity of nationalities. The absence of a unifying factor be it linguistic or religious, other than skin pigmentation in southern Sudan, is a critical challenge for these human person's claim to the right of SD/ESD⁵. The fact that the State and its agents treat the southern Sudanese as a block, because of religious and cultural reasons, does not automatically result in the southern Sudan being categorized as being populated by a homogenous human population, sharing the same fundamental traits qualifying a people (s) for the right of SD/ESD. It is extremely futile to pretend that all is fine in southern Sudan, and the missing link is the right of ESD⁶. Seen within the parameters of SD/ESD, the southern Sudan is inherently and extremely dysfunctional. There ought to be sincere debate, regarding the best system of governing southern Sudan is within a united Sudan, or existing as a separate entity⁷. It is still populated by a people (s) who are not culturally, religiously, socially, ethnically, politically, economically, and humanely united⁸. By pretending to the IC that southern Sudan is homogenous we run the

¹ Communication No 932/2000, views adopted by the HRC on 15th July 2002, during the 74th session

² See Report of the HRC A/57/40 (Vol.1), (2002), P. 93, Para.133

³ See Joseph, S., et al., PP. 100-104.

⁴ See generally Johnson, D. H., Op. Cit

⁵ See Waal, A., Op. Cit.

⁶ Generally see Nyaba, P.A., (1997), Op. Cit. The evidence in this work shows that the peoples of southern Sudan are not at all ease with itself as a people.

⁷ See Johnson, D.H., (2003), Op. Cit.

⁸ See Waal, A., Op. Cit.; in which he indicated the dangerous situation in southern Sudan, where all linguistic and tribal groups have armed militias, not to fight the State and agents, but to kill fellow south Sudanese, for political, cultural, ethnic and tribal reasons.

certain and obvious risk of denying many human persons their HRs and FFs. People (s) in southern Sudan, whose cultural and ways of life do not feature prominently in political and cultural scene, are bound to suffer. Nyaba (1997) has already alleged that, the main languages in the Sudan are Arabic in the north, and Dinka in the south, although he qualified this outrageous assumption by referring to the inconsistency of the data that he intentionally and inadvertently used. Where as secession as an expression of ESD within the general right of SD is the ultimate wish of a subjugated popular, ISD as a fundamental tool for the democratization of governance, is also an effective remedial process, to ameliorate human sufferings and institute democratic institutions to foster and nature civil society and subsequent reduction and elimination of HRs violations in all their shapes and forms¹. Southern Sudan is a human society subjected to HRs violation for many years². It is important to point out that average human persons in southern Sudan have been synthesized to fallaciously believe that ESD is the panacea for the ills that have befallen their land for such a long time³. The entrenched culture of lack of ownership and responsibilities in southern Sudan has lead to the entrenchment of blame culture, where the State and its agents (or Arabs in the north), and colonial legacy in the past, are always blamed for the ubiquitous and absolute socio-economic and cultural underdevelopment, with associated conspicuous absence of respect for HRs and FFs⁴. It is painfully discernible that the peoples of southern Sudan are labouring under the weight of fallacious presumption that their elites represent the paragon of human and political morality, and as such, they (the elites) are incorruptible. The reality of this sages of human tragedy, and merciless manipulation of human sufferings for personal and group's political and material gains is that the disparate peoples of southern Sudan are constipated with malicious and misleading personal and tribal shenanigans, masquerading as political visions, saturated in liberation

¹ The insider story of 'Nyaba (1997), is evidence to political and military dysfunctionality in southern Sudan.

² Generally see Johnson, D.H., Op. Cit.

³ See Nyaba, P.A., (1997), Op. Cit

⁴ For example, the rampant lawlessness of armed tribal groups in southern Sudan is blamed on the Arabs in the North and past colonial masters. These wild ancient tribes are simply facilitated in their natural and insatiable appetite for killing each other for cultural and material wealth reasons, by the ubiquitous presence of the A.K47 assault rifles in southern Sudan. The reason why southern Sudanese continue to kill themselves even in absence of civil wars is cultural. The phenomenon is simply exacerbated by current and previous civil unrest and lawlessness, and which, may of these unruly tribal groups exploit. (See Waal, A., ' Some comments on Militias in the Contemporary Sudan', in Daly, MW., and Sikainga, A.A., (eds)(1993), Civil War in the Sudan; PP142-154).

zeal and self-determination of the southern Sudanese¹. The elites in southern Sudan are deeply submerged in political sadomasochism, so that, the lives of ordinary southern Sudanese are rendered worthless. Whereas the endemic human agony in southern Sudan may not be inhumanity prevalent in southern Sudan, ISD is about the democratization of governance, and the giving of political, social, economic/ financial, religious and cultural space to groups of individuals within a State, so that they (the groups) are able to participate in the decision-making processes within their own State². The empirical demographic, social and cultural factors in southern Sudan strongly support the establishment of viable, legitimate and fair institutions of ISD. While the majority of population in southern Sudan are Africans, and thus, difficulties associated with racial groups is minimized, however, the place is cursed with unbelievable plethora of ethnic and tribal groups, with more than thirty (30) linguistic sub-groups, thus making the Biblical nightmare of the 'Tower of Babel'³ a true modern misfortune in term of building a culturally homogenous southern Sudan⁴. Each of these linguistic and cultural groups considers itself a nation in its own right and the reality of this fact was proven during the period leading to the outbreak of the ongoing civil war. Between 1979 and 1983, southern Sudan was divided into three autonomous existences, as opposed to other tribal groups⁵. If these wishes were to be honored or materialized, southern Sudan could become a concentration of mini African States, but with major chronic problems of big State. The demographic realities such as those in southern Sudan, explain why small groups of minority peoples are denied the right of ESD⁶. Southern Sudan can also be used in Africa, as a living factors, where, territorial integrity and the doctrine of *uti possidetis*⁷ are used to deny the right of

¹ Nyaba, P.A., (1997), The Political Liberation in South Sudan, An Insider's Story; PP 162-184

² See Higgins, R., Op. Cit., PP. 117-119

³ See the Holy Bible, Genesis Chapter 10 and 11 respectively.

⁴ This fact is contrary to the rosy picture painted by Nyaba, P.A. (1997), Op., Cit., in which, the people of southern Sudan are depicted as a homogenous cultural entity, who are bound by the same cultural and linguistic heritage. Within southern Sudan, and without the misleading interference of so-called intellectuals, the ordinary folks, say in Equatoria, do not consider themselves as being culturally homogenous with the Shilluk, who emanate from the Upper Nile portion of south Sudan. This is not an attempt to instigate further differentiation of South Sudanese, it is an honest and reasonable endeavour, to elucidate the reality in south Sudan, so that, the right of SD can be discussed meaningfully within the framework of Sudanese constitutional arrangements.

⁵ Generally see Johnson, D.J., (2003), Op. Cit.

⁶ See Higgins, R., Op. Cit; PP. 121-128.

⁷ See MacCorquodale, R., Op. Cit. at

ESD to minority groups; but instead, they are invariably allowed the right of ISD within unified State, because, ISD is deemed less threatening to international peace and security, and to the doctrine of *uti possidetis*¹. However, 'State practice has seen the right of self-determination applied to situations where the 'peoples' concerned form only a part of the inhabitants of a State, such as the Palestinians and the Tibetans, or have never been recognized as a State before, such as the Czech Republic and Slovakia; or distinct only by colour, such as the blacks in South Africa; or where the exercise of the right is by internal self-determination². Doctrinally, minority groups can only enjoy their human rights and freedoms as individuals³ and not as groups. This legally exclude them from enjoying the general right of SD/ESD within the traditional sense of SD⁴. Therefore, given the nature of limitations within the right of SD, it is only as individual members of groups within the general Sudanese population⁵ that, the southern Sudanese, can enjoy rights, which contribute to the sustenance of their distinctive religious, linguistic and ethnic characteristics within a unified State⁶. The foregoing historical and contemporary analyses of the right of SD does not negate the right of minority groups within an independent State from exercising the right of SD, including ESD, if the State grossly fails to provide all goods and services to enable the peoples to enjoy their full HRs and FFs subject to all recognized international instruments for the protection of HRs of the human person universally. This fundamental importance of the right of SD was exemplified in Europe⁷, even though it was not categorically mentioned in the Covenant of the League of Nation (LN)⁸, but the committee of Rapporteurs in its report to the LN on Aaland Island said that 'the principle (SD) is not, properly speaking, a rule of international law..... it is a principle of justice and of liberty.... To concede to minorities, either of withdrawing from the community to which they

www.elves.fr/home/blondeel/law.html; 13-14.

¹ See Shaw, M., N., Op. Cit., PP. 356-360

² See MacCorquodale, R., OP. Cit. at

www.elves.fr/home/blondeel/law.html; PP 7-8

³ See Spiliopoulou, S., ' Protection of Minorities Under Article 27 of the International Covenant on Civil and Political Rights and the Reporting System The Human Rights Committee', in Horn, F., (ed)(1994), Writing in Human and Minority Rights, PP. 57-99

⁴ See Gayim, E., (1994), The UN Draft Declaration on Indigenous Peoples-Assessment of the draft Prepared by the Working Group on Indigenous Population, PP. 9-72.

⁵ See Modeen, T., ' The Aaland Island Question', in Smith, P., (ed)(1991), Ethnic Groups in International Relations, PP. 153-183

⁶ See Addis, A., ' Individualism, Communication, and the Rights of Ethnic Minorities', Notre Dame Law Review Vol. 5, No. 5, (1991), PP. 1219-1272

⁷ O'Brien, J, Op. Cit., P. 163.

⁸ See Cassese, A., (1988), International Law in a Divided World, PP. 131-137

belong.... Would destroy order and stability within States and to inaugurate anarchy in international life¹. Critical analyses of this statement within the framework of southern Sudan, reveals the dilemma and difficulty of implementing the general right of SD in that part of Africa². There, in southern Sudan, can be found Christians, Muslims, Atheists, Animists, and Spiritualists³. These different groups of individuals with their dissimilar religious believes, are found in all the myriad of linguistic and tribal application of the definition of the word 'peoples', within general SD. This leads to some conceptual and practical difficulties as regard the enjoyment of the general right of SD by the peoples of southern Sudan⁴. The threats of territorial differentiation and disintegration, due to the actual presence of categories of peoples, within the peoples of southern Sudan, make the primacy of territorial integrity of States, within political and legal requirements of SD a valid limiting factor⁵. The overarching requirement for territorial peace, security and the prevalence of law and order as aggregate sine qua non for positive provision of goods and services, as exemplification of the vindications of HRs and FFs⁶. of peoples in general, makes it a difficult choice, for many informed individuals, including well meaning southern Sudanese, to recklessly advocate for ESD for southern Sudanese, as the only available methodology of enjoying their inalienable HRs and FFs. It is true that SD has been denied to many people universally⁷. However, some of the practical and actual dangers of runaway SD by infinitely smaller groups of human persons within independent State, such as the Sudan, confound the fears of the IC as a genuine demand for the establishment of another

¹ League of Nations Council, The Report of the Committee of Rapporteurs, B7/21/68/106 [VII] 27-28.

² See Waal, A., Op. Cit; for the dangerous schism in southern Sudan.

³ Se Machael, H., (1934), The Anglo-Egyptian Sudan, PP 1-48

⁴ Generally see MacCorquodale, R., in www.elves.ens.fr/home/blondee/law.html; in which he raised crucial questions regarding the concept 'Peoples', as a sine qua non of the right of SD.

⁵ Ibid, for issues of 'territorial integrity of States', within the remit of SD in general.

⁶ The works of Johnson, D.H., Op. Cit; Waal, A., Op. Cit; and Nyaba, P.A.; Op. Cit; regarding the instability in southern Sudan, must be taken seriously, for the purpose of the right of ESD for the peoples of southern Sudan.

⁷ Morris, G. T., 'In support of the Right of Self-determination for Indigenous Peoples Under International Law', in MacCorquodale, R., (ed)(2000), Self-Determination in International Law, PP. 301-302.

independent State¹. Notwithstanding all these fears, the right of ISD has been granted to group within independent sovereign States².

4. The Essence of Internal Self-Determination for the Peoples of Southern Sudan, within the Sudanese Constitutional Institutions:

The perennial political, social, cultural, military, economic/financial and religious upheavals and instability in Sudan in general and southern Sudan in particular, have been fuelled for many decades by ubiquitous absence of the right of ISD³. Throughout history, the southern Sudanese have borne the brunt of discriminatory, exploitative, genocidal, and divisive policies, emanating from the State and its agents⁴. The effects of these unjust and inhumane policies, acts and omissions upon the southern Sudanese, have been, the emergence of a human population (or peoples) characterized by absolute and permanent morbidity; illiteracy and innumeracy; low productivity and incomes; marginalization and isolation; unemployment; underemployment; disguise-employment; abject poverty and socio-economic underemployment; thirst, hunger, fear and lack of civil and political rights and fundamental freedoms; civil wars and rampant rape; plunder and pillage extra judicial killing; child prostitution and slavery; child soldiers and juvenile delinquency; and general disintegration of socio- cultural fabric; through the undermining of the family as the basic unit of socialization and cultural heritage⁵.

The first time the southern Sudanese decide to violently protect their HRs and FFs was in 1955. This violent struggle continued for seventeen (17) years, until the signing of the 1972 Accord. The 1972 Accord was hailed by observers as the harbinger for socio-economic development of the southern Sudanese, and the panacea for centuries of violation of their HRs and FFs. This adulation was short-lived. The entrenched political, security, economic, and social instability in the southern Sudan led to the outbreak of the second civil war in 1983⁶. The rallying cry of this rebellion was the establishment of new political institutions in the Sudan through the creation of new Sudan. Metaphorically speaking, the most unfair and unconscionable aspect of this political, ideological and military ambition for the molding of new Sudan was (and is) that the

¹ See myntti, K., 'National Minorities, Indigenous Peoples, and Various Modes of Political Participation', in Horn, F., (ed)(1996), *Minorities and Rights of Political participation*, PP. 16-26.

² See MacCoquodale, R., in www.elves.ens.fr/home/blondce/law.hotml.

³ See Woodward, P., (ed)(1991), *Sudan After Numeri*, PP 1-1216

⁴ Generally see Oduho, J., and Deng, W., (1965), *Op.Cit.*

⁵ Generally see Johnson, D. H. *Op. Cit.* and Nyaba, P.A., *Op. Cit.*

⁶ See generally Woodward, P., (ed)(1991), *Op.cit*

blood of innocent southern Sudanese children, women and men is used as the liquid for mixing the concrete for building the blocks for this united new Sudan. The bones of southern Sudanese women, children and men are used as structural inputs for the frames, in the construction of this New Sudan¹. The lives of southern Sudanese children, women, and men are used as the currency for purchasing absent international support for the establishment of this utopian new Sudan. This vacuous sloganeering for new Sudan has cost southern Sudan, two millions lives of their sons and daughters, mothers and fathers, and grandmothers and grandfathers, let alone uncles and uncles².

Notwithstanding all culpable and wrongful acts and omissions perpetrated by the State and its agents against the peoples of southern Sudan³, the IC is keen to discover vestiges of civility and political acumens that are indicative of socio-economic, political, security, administrative and cultural infrastructure, that are commensurate with universal standards, attributable to peoples that are capable of governing themselves, even within the framework of African standards, without saddling the IC with more burdens, associated with failed States, due to corruption, greed, mismanagement, tribalism and sheer political recklessness, culpable negligence and ubiquitous absence of semblance of accountability⁴. Critical examination and analysis of the short political history of southern Sudan, as an autonomous political entity within a united Sudan (1972-1983), reveals a plethora of heinous acts and omissions, which if measured by universal HRs standards, expose gross violations of HRs and FFs of the peoples of southern Sudan. The southern Sudanese elites mercilessly exploited the ignorance of their brethren and they (the elites) squandered human⁵, temporal, financial and natural resources, for personal and group' interest and benefits. If this is how the elites of southern Sudanese aspire to rule their peoples, then,

¹ See Nyaba, P. A., (1997), Op. Cit. for the amount of killing that has taken place in southern Sudan.

² Ibid

³ Refer to Oduho, J., and Deng, W., (1965), Op.Cit

⁴ Refer to Johnson, D. H., (2003), Op. Cit; to get a general idea of the degree of political confusion in southern Sudan, and which engendered instability in that region.

⁵ The southern Sudanese have also been helpless victims political of institutionalized tribalism, corruption, mismanagement, gross political negligence and absolute poverty, perpetrated upon them by their unscrupulous elites, and who in many occasions, operated hands in glove with the Sudanese State and its other agents. The sum total of these factors and variables of subjugation of the southern Sudanese, amounted to heinous and permanent violation of their human rights fundamental freedoms, and concomitantly, the permanent denial of their right to SD in all its forms and shapes

the general quest for ESD is questionable. There is no reasonable single human person in southern Sudan, who will accept that. It is unlawful and inhumane for the state and its agents to violate the HRs and FFs of the southern Sudanese, but it is acceptable if the same HRs and FFs are violated by southern Sudanese elites¹. Tribalism is as heinous as any politics of apartheid. The end result is that, other human persons are favoured as against others, due to subjective reasons. The genocide in Rwanda was fuelled and sustained by tribalism and its evil propagators. One does not need to be a clairvoyant to predict what will happen if the ill-equipped southern Sudan is rushed to ESD, with no infrastructures whatsoever, to run a modern democratic State, and one that, will fulfill its obligations to the southern Sudan and to IC². The evidence on the ground suggest that there is more work that needs to be done, to educate the southern Sudanese in all spheres of human life vis-à-vis the demand for all goods and services, within a political and legal economy. The southern Sudanese are extremely traumatized, and they need decades to rest and regenerate their human energies for survival as a viable human society. Blind quest for ESD and with a population that is so morbid and disabled is an extremely irresponsible political leadership³. The majority of southern Sudanese are illiterate and do not understand the subtleties involved, vis-à-vis the right of ESD. It is an unconscionable and a criminal act, to mislead them that, the mere flirting with the concept of ESD will emancipate them from their true enemies, (hunger, famine, thirst, lack for proper, shelter, tribalism, morbidity, corruption, illiteracy, innumeracy, and manipulation by their elites). It is no use telling the southern Sudanese that Islam is their enemy⁴. The simple state of being a Christian in southern Sudan is not a panacea against all the ills on underdevelopment enumerated above. A healthy, educated, well-fed, literate and numerate, and employed southern Sudanese can defend himself /herself better against the state and its agents. It can be argued that the wars which were perpetually fought in southern Sudan are not in the short-term and long-term in the interest of the southern Sudanese⁵.

¹ Generally see Nyaba, P. A., (1997), Op. Cit

² Generally see MacCorquodale, R., at www.elves.ent.fr/home/blondeel/law.html; in which warned against the irresponsible use of the right of SD, which inferring on the rights of others, and also inimical to international peace and security. The situation in southern Sudan can easily get out of hand if the right of SD is misused and abused in that part of Africa.

³ This is notwithstanding claims by the SPLA that is in charge in southern Sudan over issues concerning the right of SD of the southern Sudanese peoples. (Generally see Johnson, D. H., (2003), Op. Cit).

⁴ See Nyaba, P. A. (1997), Op. Cit.

⁵ See Bechtold, P. K., (1987), Op. Cit.

There is no accumulation of experience in southern Sudan, because people are ever dying young and migrating away from the place. It is deductible and discernible that security and political credentials of some of the current leaders in southern Sudan are not favorable as the precursors for an independent south, anticipated in the event of a yes vote for secession during the impending plebiscite.

5. Constitutional Legislative Entrenchment of Internal Self-determination:

There is now ample evidence indicating that any amount of civil wars in the Sudan will not guarantee the HRs and FFs of the southern Sudanese¹. A new approach is called for, in the quest for the vindication of the HRs and FFs of the peoples in southern Sudan. At this juncture, one chooses to concur with Professor McCorquodale that a 'human right approach'² is the best methodology for implementing the cardinal tenets of SD through ISD. Instead of basing the right of SD on peoples and territorial factors and conditions, ISD shall be anchored on universal principles of HRs, subject to both national and international oversight. The constitutional and legislative instrument must enforce these HRs norms and principles in the form of domestic rules of law, and which are recognizable by all human persons within the State. It is only through the HRs approach that religion and race and all concomitant discriminations shall not be entrenched in society as the basis for cruelty against, and exclusion of others. The political nature of general right of SD³, and its legal aspect must be reflected in this new approach. These political and legal nature of the right of SD is clearly amplified in the UN Charter 1945 articles 1(2), and 55 respectively; the ICCPR 1966; and ICESCR 1966; the African Charter on Human and Peoples Rights (ACHPR); the Helsinki Final Act; the UN General Assembly Declaration on Granting of Independence⁴; the Declaration on Principles of International Law Concerning Friendly Relationships⁵; and the Universal Declaration of the Rights of Peoples. The limits on SD/ESD are for protection of others within the State and the IC⁶.

¹ Refer to Waal, A., Op. Cit.

² Generally see www.elevs.ens.fr/home/blondeel/law.html;

³ Cassese, A., (1988), *International Law in a Divided World*, PP.131-137

⁴ GA, Resolution 1514 (XV) 14th December 1960, UN Doc A/4684 (1960), GAOR 15th Session

⁵ UNGA Resolution 2625 (XXV) 24th October 1970; UN Doc A/8028 (1970), 25 UN GAOR Supp (No 28)

⁶ See Dixon, M., and MacCorquodale, R., (2003), *Case and Material Law* (4th Edition), PP. 213-216.

6. Consequences of Violation of the Right of Self-Determination:

The foregoing discussion is an attempt to elucidate the degree and intensity of political, legal, security, cultural, social, religious, economic, financial and factual contradiction in the Sudan in general and southern Sudan in particular. It is also submitted that what the peoples of southern Sudan need in a way of effective participation in the administration of their own affairs, is a genuine opportunity in which they enjoy the right of ISD as opposed to ESD, which imply the secession from the rest of the Sudan¹. This right of ISD, and as mentioned somewhere in this paper, is directly linked to the HRs and FFs. This means that there must be established democratic institutions throughout the level of political and administrative institutions. There must be established effective organs of legislative and judicial processes for the flourishing of the rule of law, to guarantee transparent governance. While historical evidence of HRs and FFs violations perpetrated by the State and its agents against the southern Sudanese shall be the basis for the entrenchment of ISD in southern Sudan, continuous future violation of the ISD by rule of law, and to southern Sudan form slipping into political and security abyss, with dire consequences for international peace and security².

On the other hand, it must be reiterated that it is not only the agents of the State from northern Sudan who are the perpetrators of HRs and FFs violations in southern Sudan³. There are criminal elements within the southern Sudanese political and military elites, who are equally vile and entertain insatiable appetite for acts and omissions that are the foundations for grass HRs and FFs violations in southern Sudan⁴. These individuals and groups must not be allowed to use ISD secured for the southern Sudanese peoples as their own private enterprise, for amassing wealth and entrenching tribal and ethnic animosity, which can always lead to dangerous tribal and ethnic violence⁵. The Sudan must be pressurized by the IC to ratify all relevant conventions and protocols such as the First Optional Protocol (OPI) to the ICCPR 1966. with membership of all important HRs instruments, the elites in southern Sudan should then be made to understand that the IC is interested in the way they run the affairs in southern Sudan, and this includes the

¹ This author differs with Nyaba, P.A. (1997) Op. Cit.

² Critical reading of the information gathered by Johnson, D. H., (2003), Op. Cit; shows the danger in the southern Sudan conflict, vis-à-vis the Middle East, Africa and the whole international community.

³ Refer to Waal, A., Op. Cit.

⁴ Refer to Nyaba, P. A. (1997), Op. Cit.

⁵ Southern Sudan conflict, vis-à-vis the Middle East, Africa and the whole international community. Refer to Nyaba, P. A. (1997), Op.Cit. See Waal, A., Op. Cit.

possibility of trial by international tribunals, should their acts and omissions amount to threats for peace and security of the IC. It is imperative that elements in southern Sudan should not be allowed to foment political and security unrest, as pretexts for civil wars, in the name of emancipation and groups' motive for material gain at the expense of the innocent people of southern Sudan. It is baseless for the elites in the southern Sudan to demand international assistance, if they themselves do not abide by those rules which govern benefactors. The IC must insist on its right to oversee the implementation of the right of ISD if those entrusted with this responsibility in both northern and southern Sudan are not up to the challenge, due to incompetence, corruption, greed and political malice.

7. Secession as Ultimate Right of Self-Determination:

It has been acknowledged above that the right of ESD and which includes the secession of a part or parts of an independent State is not always the best options for the vindication of HRs and FFs of an oppressed people and for guaranteeing international peace and security. However, under sever circumstances of gross and persistent violations of HRs and FFs of human persons within a State, be it colonial or independent State, the right of SD including the right of ESD with the secession of that part of the State containing the oppressed people is a legitimate option for the peoples. They were allowed to set up their own independent sovereign in East Timor¹. This is a perfectly legal action within the remit of the UN Charter, and common article 1 of both the ICCPR 1966, and the ICESCR 1966 respectively. In the case of southern Sudan, if the Sudanese State and its agents continue to oppress the people, then the IC must ensure that the southern Sudanese must be entitled to the right of SD including that of ESD. However, there must first be guaranteed effective infrastructures within which framework the people can exercise the right of ESD. This right must not be granted if it amounts to mere transfer of means of oppression from the Sudanese State and its agents to that of unscrupulous political thugs in Southern Sudan². It is not worthwhile for the IC and the people of southern Sudan, for the right of ESD to be sued by the elites and political opportunist in Southern Sudan as a political access card, for personal and group enrichment at the expense of increase the political and security problems already in existence.

¹ See McCorquodale, R., at www.elves.ens.fr/home/blondeel/law.html.

² General see Nyaba, P.A., (1997), Op. Cit.; for the evidence of acts and omission of these political and military thugs in the southern Sudan.

An independent southern Sudan will not automatically mean that all the factors of underdevelopment and HRs violations mentioned above shall disappear overnight. It must be reiterated that, even though the Sudanese State and its agents are culpable for the suffering in the southern Sudan¹, there are cultural factors that must be eliminated in Southern Sudan, if the southern Sudanese are to benefit from the right of ESD. A solid base for the right of ESD must first be built, and this includes the identification of all tribal, social, natural, cultural, mythical, fatalistic, ethnic, and psychological factors within the southern Sudanese society, with all its myriad of languages, religions and cultures². It is possible to identify some of the causes of misfortune of the peoples of southern Sudan within their sociological and cultural system, without putting them through the agony of ESD, with further waste of human lives³. There is ample evidence around, in Africa, that points to the fact that ESD is not the ultimate panacea for the vindication of the HRs and FFs of the peoples in these countries. It can be argued that, the African continent experienced more incidents of HRs and FFs violations during its time under the leadership of Africans than when it was still a network of European colonies. A cynic may say that it is the Europeans who are fomenting HRs and FFs violations in Africa by proxy. However, it is obvious that African leaders have managed to internalize all the worse aspects of European concepts of Statehood and its might, while jettisoning all benign and human aspects of the same concepts⁴.

It is submitted that the right of ESD must be made a function of viable democratic institutions, and not of political rhetoric, influenced by debased tribal and racial interests, masquerading as legitimate aspiration of the masses in a troubled geographical location in Africa, including southern Sudan⁵. In Southern Sudan, there exist human populations that have not attained the minimum of intellectual awareness to be able to hold a modern government to account, even within the framework of African standards. The bulk of Southern Sudan is inhabited by human persons who practice nomadic mode of production for subsistence. There are also substantial numbers of human persons who entirely depend on nature for subsistence agriculture. It is fair to say that, Southern Sudan is a human society existing in a state of nature. The best that can be done

¹ Ibid

² Refer to Waal, A , op. cit.

³ See Nyaba (1997); Op. Cit.

⁴ See Woodward, P.(1990) and (1991) op.cit.

⁵ The ' Human Rights Approach' to issues of SD, advocated by Professor McCorquodale, must be the framework in the southern Sudan.

for Southern Sudanese are too few and ill prepared to run a viable economy with massive international political, security, military and legal commitments¹. To be able to play its role internationally, Southern Sudan should at least have a semblance of a modern economy, which does not exist at the moment. There is too much sentimentalization of the right of ESD and secession among the southern Sudanese². ESD is a serious legal, political and security issue, and must be decided on in accordance with concrete foundations, and based on certainty for success, otherwise the result can turn out to be worse than the sufferings being endured by the southern Sudanese at the moment.

8. Conclusion:

This paper has attempted to discuss the inherent weakness of the CPA that contribute to ineffective implementation. The important weaknesses are mainly attributed to the partisan nature of this agreement. The majority of the people in the country do not understand why only the NCP and the SPLA/M are the main political beneficiaries. The manner in which matters of power and wealth sharing are tackled do not seem to operate well even as between the NCP and SPLA/M. The main element of concern that this paper concentrated on is the issue of self-determination which is an undefined term, charged with a lot of political and legal emotions. While recognizing that Southern Sudan has underwent some painful political periods, there could have been more mechanism to guarantee the continuous protection of their human rights within a united Sudan with the same rights that have been guaranteed within the CPA. The extensive references used in the section on SD have been intended to show the reader the universal concern about the issues of SD. It is to educate the reader about the fact that SD does not always mean the breaking away of a discontented political group such as Southern Sudanese. However, the way it is put in the CPA carries the ultimate meaning of breaking away as it is obvious from the writing of many Sudanese. This obsession with the definition of SD as the breaking away of southern Sudan is the most major inherent weakness of the CPA as it does not allow others to consider Southern Sudan an integral part of Sudan even at this very moment.

¹ The fiasco surrounding the first regional autonomy (1972-1983) is a point in issue.

² This is obvious in the writing of southern Sudanese like Nyaba, P. A., (1997), *Op. Cit*; who tends to confuse personal grudges with purely national issues.

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Possible Challenges and Impediments To the Nivasha Peace Agreement

Dr. Adlan Al Hardallo

1. Introduction:

The Comprehensive Peace Agreement (CPA) between the government of Sudan and the Sudan Peoples Liberation Movement / Sudan liberation Army (SPLM/A) of January 9th 2005 succeeded in bringing the war to an end, laid the basis for the democratic practice, provided for a government of national unity and a transitional period of six year at the end of which the southern Sudanese would decide whether to remain in a united Sudan or establish their own state according to the agreed principle of the right of self determination. The agreement –allowed for elections at all levels of government not later than the end of the 4th year of the transitional period. It also laid the foundation for genuine decentralization that seemed – on paper- to have satisfied the aspiration of the incongruous regions of the Sudan. It provided for an independent and neutral legal system. It granted the federal units of the state powers that they did not possess before, and provided them with resources and wide autonomy against the historical dominance of the center Apart from ending the war in the southern region it, by example, opened the way for ending other wars in western and eastern Sudan. Hence, with serious and genuine commitment to these agreed principles between the signatories of the agreement a new start for a Sudanese state based on freedom, justice and equality on the principles of democracy and citizenship could be visualized however, the question remains how could the agreement be put to work in both text and spirit? On other words, what are the needed arrangements that could avoid the many challenges and impediments facing its implementation? The following pages intend to address these questions and highlight possible problems and impediments to the implementation of the CPA.

2. The Logic of History:

It is important to remember that this is not the first time that Sudan faces transition from war to peace. Twice, in 1972 and 1997 peace failed This in itself poses a challenge! The dis-honoring of agreements has always loomed large in the minds of southern Sudanese. For them the political issues have historically been the dual nature of the Sudanese state and regional imbalance inherited from Colonialism as well as the need to challenge the Muslim/Arab domination of the state. These were the concerns around which all southern Sudanese political forces were united

forgetting, in between, whatever diversities and differences amongst them. For southern political forces these issues are not past concerns that have been resolved by the signing of the peace Agreement. On the contrary, they still remain on their agenda even after the signing of the Agreement.

The history of Sudan since independence gives enough examples of tensions between political and social forces bent on the one hand on unifying the different nationalities in one state with a one-dimensional cultural view, and on the other hand pressures that refuse this view in both content and means. The roots of this confrontation lie in that the first view aims at unifying nationalities and ethnicities, if necessary against their will, in a national state with full harmony, while the other view conceives unity of Sudan as a thread that links all nationalities in one state on the basis of citizenship, leaving the door open for any of them to abandon or keep its identity within the context of national self determination.

Today Sudan passes through a difficult phase, perhaps the most difficult in its recent history; a period characterized by tension and confusion, between dreams and reality. Hence it is imperative for all who deal with its political, social and economic future to realize that there is need for genuine transformation that aims not at in time and transitory administration of clearages, but one that aims at considering the roots of the prevailing culture in the collective of the memory of the people. Without this, peace, political stability and unity- all central objectives of the CPA- will not be attained. Unity of the state, which is given priority in the CPA, is rooted in history and is a permanent challenge and the result of continuous experience and internal struggle. Ali Mazrui's two different images of Sudan are very much relevant today as they were in 1968. The first image is war an Afro-Arab bridge able to show the way in which Arab and African identities could be linked to each other. The second is that Sudan as an example of the inability of those two identities to live together in one country. Since 1968 this duality seems to have intensified rather than bridged. The introduction of Shariaa by former President Numairi in Khartoum by Hassan Al-Turabi, the twenty years war led by the SPLM/L, the concept of new Sudan, the right of self determination and the Islamic hegemony in Northern Sudan with ever growing implications for the animist and Christian South, are all factors that help to widen the gap between North and South Sudan. With this background it is pertinent to ask whether the compromise thesis "one

country two systems" adopted by the CPA could achieve permanent peace and unity of the state in Sudan.

3. Potential Challenges and Impediments:

For some Northern opposition forces and some intellectual circles the CPA may not be the ideal solution to the country's complex conflict, yet they still judge it to be a great achievement in the history of endeavour to resolve the North-South conflict. For this reason all critics profess support to it, but at the same time envision serious dangers for peace in the absence of national consensus on the agreement. The opposition and other intellectual circles, saw it as a partial solution that deals with only one part of the country, namely south Sudan and neglected other parts in the West, East and North Sudan at a time when there is no region or body in Sudan today, which or who does not complain of injustice and marginalization. Moreover, the agreement, in their opinion, gave the two signatories more than they deserve and marginalized the rest of political forces in the North and South.

This in view of the critics is a short sight that will not lead to the political stability aspired to by all Sudanese. Many in Northern Sudan do not understand the restriction of peace and the implementation of the agreement to the National Congress party and the SPLM/A. Opposition forces reject the percentages of power sharing allotted to them by the agreement and stand to demand their amendment, if they were to join the government of National Unity.

In addition to these some other arguments of more substance are raised by critics:

- That the agreement laid the theoretical foundations for the concept of two entities; The Muslim North the Secular South, and followed this with an imbalanced federal structure of one region in the South with three levels of government as against only two levels in the North and No region or regions parallel to the regional government in the South.
- The agreement contains a major contradiction; it gives unity priority but it's details strengthen separation.
- The institutional federal structure is not suitable for Sudan; the Number of federal state is inflated beyond the capabilities of the Sudanese economy. Crucial for the success of a federal system is the ability of units to support themselves, from their own resources, otherwise they would loose their autonomy and

become dependent on the center. Federal Units should be big and economically viable.

- The south should ideally be three regions to avoid administrative problems and political and tribal conflicts.
- Peace by all will be protected by all. Those who don't participate may not respect and protect peace in which they had no say. The future of Sudan should not be left to be decided by only two factions, the warring parties.
- The agreement treated the relation between religion and state in a way that divided the country into two regions in terms of law: a secular system in the south and an Islamic one on in the North, which is a recipe for fermenting trouble in the future.
- The presence of some groups who feel to have been sidelined by the process and the current war problems in Dar Fur and East Sudan pose obstacles for the implementation of the Peace Agreement.

However, it is important to note here that this critique does not go as far as opposition or rejection of the agreement; the aim rather is to guard against specific loopholes that, if not treated, the goals of peace and democracy would be at risk of being achieved. Two of the opposition parties, namely, the Umma Party of Sadig Almahdi, and the Popular Congress Party of Hassan Al-Turabi, in partnership with other smaller parties, have already formed an opposition group by the name of the National Alliance. Presently the alliance does not present a big threat to the government. With time, however, and the expected slow delivery of peace dividends, it could grow into a formidable force of opposition, depending on whether they succeed to win the support of the largely disgruntled public opinion toward the politics and policies of the National Congress Party, the major partner in the government of National Unity.

4. Armies and the Proliferation of Arms:

Perhaps one of the most serious threats to the implementation of the CPA is the presence of many armed groups (Militias) outside government forces and those of the SPLM/A. The security arrangement protocol states that no armed group allied to either party should be allowed to operate outside the two forces (Sudan government army and SPLA). Those who have the desire and quality shall be incorporated into the organized forces of either party (army, police, prisons and wild life forces) while the rest shall be integrated into the civil service and civil society institutions. Any group outside the forces of the two signatory

parties to the agreement should not be recognized. But some of these militia groups and other armed rebels still exist in different parts of the country. They refuse that their fate be decided and imposed by others without entering into political agreements. This applies to the Southern Sudan Defense Force, the combat force in east Sudan under NDA (National Democratic Alliance).

In Darfur there are the Sudan liberation Army (SLA.), the Movement for Justice and Equality as well as the newly formed National Salvation Front.

The parties to the agreement agreed to address the status of There and other armed groups in the country with the view of achieving comprehensive peace and stability and to realize full inclusiveness in the transition process. So far, and after nearly two years of the implementation of the agreement, very little success on these issues has been attained. Leaders of the militia find it difficult to accept the options given to them when they were preparing themselves for greater opportunities than these options. Some still do not want to take the options offered, and it is rumored that they receive support from elements of Sudan army. But the army refuses the accusation. It is, however, known that some of these southern militia have relations with Sudan government since the muting of Nasir against the SPLM/A and the split of the SPLA/M in 1991. From that time on these militias were allied to the government. Even after Fawlino Mateb, Leader of SDF joined the SPLM, there are still armed groups who did not make the choice, particularly, in Upper Nile and Unity States.

Beside these rebel groups the country now has three armies: that of Sudan government, the SPLA/M army in the South and three thousand main units divided equally between government of Sudan and the SPLA/M representing the future Sudan army if the country remained united. This is in addition to the project of ten thousand solders of the African Union and those of the United Nations of the Same Number.

In the face of all these armies, and judging by the historical behavior of the military institution in developing countries, and in Sudan in particular, the absence of trust between North and South Sudan, the weakness of civil society and the non-ownership by the people to the peace process- for all these one is skeptical that things will proceed as planed for. The military in Sudan has become an integral part of the conduct of politics. Localized rebellions and disturbances may be

transforming politics from below. The military coup'etate has been the most prevalent way of change against the will of those in office- the recurrent coups highlight the pervasiveness of conditions supportive to armed incursions into the political realm. The military does not possess the culture of inclusiveness in governance. It is wise that the two parties to the agreement allowed for internationally monitored ceasefire. But we should not forget that many ceasefires have been violated in Sudan and in other places, and there is no guarantee to curb its re- occurrence. The Sudan is faced by an open conflict between the state and many groups within it, the thing that complicates the process of interaction. Violence in any form could easily overall constitutional arrangements. The question of Abyei whose oil lies in the front- lines of the conflict, could turn out to be an eminent challenge to the peace arrangement. The failure of the Miserya and Dinka Ngok to come to an agreement and that of the international commission of experts to determine the boundaries of Kordofan in 1905 is a sure ingredient of war between South and North, if not between two independent states in the near future!

5. The Loss of Dr. John Garang:

The death of Garang left a vacuum at the heart of southern leadership because he was the one man who had become the internationally recognized face of southern struggle, and also because he was widely seen as the only one who could keep the competing tribes and factions together. He probably was the first among those few southern leaders who are committed to a united Sudan. He always believed that the south would get a better deal as part of an African majority that could control the whole Sudan. He articulated a vision of a New Sudan where all Sudanese enjoy equal rights irrespective of region, religion or race and inspired millions of Sudanese in both the South and north. His tragic loss is bound to have negative consequence on the whole political seen in Sudan, especially for the south. His character represented the rare moment and a symbol around which the impoverished masses in all Sudan met. It appears to many that there is an overriding fear that this unfortunate event would push the peace process off track. The deadly riots that devastated Khartoum and other towns in the aftermath of the event were an expression of cultural and psychological precipitation in society fed by historical incidents of negative interaction. These precipitations lead in the end to hatred, not necessarily absolute perhaps. This hatred could be the prime mover of cruel and hysteric action. The neglect of the social life and the parochial policies have led to poverty coincided with racial and regional identities. As long as these conditions

remain neglected, and the people are not convinced that they have a common future, peace will remain illusive and fragile.

The absence of Garang from the national political scene has left the entire peace process in jeopardy. The SPLA/M could again begin to split on regional and ethnic lines with return to intertribal fighting as occurred in 1991. Although the SPLA/M achieved a seamless transition of leadership to begin with, Silva Kier, the new leader and first vice president is described as a military man who does not possess the political abilities of this former leader. The task ahead of the Movement is enormous. There still remain many hanging problems which have direct bearing on the future of peace and a United Sudan. The relations between the two partners to the peace agreement are not yet fully tested. So far some serious differences are arising between them over many issues.

6. Erosion of National Capacity and Post Conflict Reconstruction:

The issue of political transition and post conflict- reconstruction is very complex, multi-faceted, in as much as it has many dimensions ranging from economic, political, social and cultural factors. Guiding principles in the area of political transition and post conflict reconstruction should in the very least include the following:-

- a. Inclusiveness: the need to ensure inclusiveness and pluralism to take into account diversity of interests and in particular cultural pluralism.
- b. Shared purposes direction and future: as long as former combatants as well as society at large are not convinced that they have a shared future, peace will remain illusive. For this reason, participatory and practical inclusive exercises of national visionary and long term perspectives are essential for the objective of instating a shared vision. This constitutes a major component of the reconstruction package.
- c. Developing capacity: The ability to mobilize financial resources, both domestically and externally; the need to revive infrastructure and the need to relate to the external environment.

These capacities are critical for the sustaining of peace and reconstruction as they constitute the basis of successful reconstruction and development. In the long run in the post conflict period, the agenda for peace can not be dissociated from the agenda for development, rehabilitation, poverty alleviation and human development. All these development actions should not be deferred to eventually create new

areas of contention as happened after the Addis Ababa Agreement. The tasks of the resettlement of displaced and refugees, demobilization of combatants and their integration in civilian activities etc.... are urgent priorities that have to be urgently treated.

In the light of the conspicuous absence of the above cited guiding principles in the area of political transition and post conflict reconstruction it is difficult to imagine that peace will be preserved and implemented. Instead of inclusiveness that takes into consideration the diversity of interest, the ruling National Congress Party is bent on exclusion. The government of the day is dominated by small groups that run the country in a, more or less, secretive authoritarian manner lacks the support of civil society and the endorsement of the major political parties interests. This neglect is a serious threat to the peace process. The government has a narrow definition of security based on considerations of military defense and regime stability. Instead of participation and inclusiveness it resorts to force to resolve issues. Exclusion is not only, practiced against opposition forces and civil society, but also against partners in the same government. Many complaints are raised by the SPLM/A against the NCP for not keeping with the spirit of the CPA, and against lack of consultation on major policy decisions. This is in addition to complaints of all parties against the sluggishness in the implementation of the agreement, particularly complaints against the delaying tactics of the National Congress Party to review all the laws that contradict the interim national constitution.

As for the principle of shared purpose and future direction, it seems that neither the partners to the agreement nor society at large see that they have shared purpose and future direction. Many ordinary citizens today seem to be convinced that each of the political forces that are active on the stage is working for a different purpose and future. For the NCP the CPA is just "a deal to stop the war; no body is convinced of it". It, therefore, behaves in a way as if nothing has changed. So, it sticks to controlling power, at least till the end of the transitional period. On the other hand the SPLM/A is beginning to show some differences among its leadership and failed to come up with initiatives that counter the policies of the NCP. Currently it is on the defensive. This stance led to loosing its initial glamour with many Northern Sudanese, who earlier flocked to join the movement. Many Northern Sudanese now are of the opinion that southern Sudanese are working for their future,! Their own state!

The principle of capacity is another hurdle on the way of peace implementation. At present Sudan is at its weakest, and has more or less lost its momentum. It suffers from seriously eroded economic, social and political structures.

Protracted crises and civil wars and internal migration waves unprecedented in Africa in recent times, have led to the destruction of its rural structure and its ethnic map.

Redressing the historical grievances which resulted from the unbalanced development in the south, the Blue Nile, the Nuba Mountains, Dar Fur as well as other parts of the country require capacities that are, at present, not available in Sudan. The civil service on which depends the planning and execution of development and reconstruction has disappeared. It lost its neutrality and became a partisan machine integrated into the web of the ruling National Congress Party. It is no longer a service that supports the public at large. The capacity of professionals, scientists, technicians and university professors has been lost either by political purges or by emigration to the oil rich countries or regional or international organizations. Budgets preparation has become a ritual rather than a planning process. The educational system which is supposed to produce the necessary skills and professions and, which has, to a greater extent done so in the past, has seriously deteriorated at all levels. All this happens at a time when the country is preparing for wide changes in its social, political and constitutional structures as called for by the CPA. Under the circumstances described it is unlikely that the agenda of the CPA would be realized to the satisfaction of the Sudan people.

7. Conclusion:

It is not out of pessimism that I chose to address the topic of challenges and impediments to the Sudan peace process. On the country, it is optimism that makes one usually see the bright side of the picture. Though the Comprehensive Peace Agreement may not be the ideal solution to the country's complex conflicts, yet it deserves to be judged as a great achievement in the history of endeavour to resolve the North-South conflict. Regardless of any shortcomings the agreement succeeded in resolving the two major issues of conflict. It brought the war in the south to an end, and by example, opened the way for ending other wars in other regions of the country. It also brought an end to the historical hegemony of the center over the peripheral regions and gave them the autonomy and the resources they have taken up arms for. The question now remains how the agreements could be put to work. In other words,

what is the needed interim period arrangement that would preserve the peace process.

The prevailing view of many citizens is one of optimism and a new Sudan of development, prosperity and democracy. Judging by the potential of the country in material and human resources this optimism is justified. The question is how this potential could be actually realized.

Under the prevailing conditions of governance in the country one doubts whether this goal would be attained. The tasks of preserving and implementing the peace agreement are enormous. Every step in very direction is a challenge. The country is broken. The long transition period will throw up many problems and everywhere groups and regions will demand that their grievances be addressed. The state is burdened with an enormous debt. What is required by way of making unity attractive to the citizens of the south under the circumstances within six years is beyond the country's resources. The government is dominated by small groups that run the country in a secretive and authoritarian manner. It is incapable of identifying and defining the national interest of the country. It failed to institutionalize the structures that enable it to solve its problems. State interest prevails, and it often is the main threat to its citizens. Many skeptics fear that the new partnership between the National Congress and the SPLA/M will not lead to change. The one does not believe in democracy, the other has never practiced it!!

Peace building that follows the resolution of conflicts is defined as that activity that identifies and builds the structures that lead to the strengthening of peace so that conflicts do not recur. Most important is the political choice of priorities which concerns issues that have to be urgently addressed. Important also is the identification of the beneficiaries on both sides, namely, the combatants and civil society, to participate and lead the process of reconstruction and development. This is important for the institutionalization of cultural inclusiveness and partnership between the state branches. This is important for the expression of inclusiveness in the sense that all competing social forces feel that they have a stake in power. In the end there is need for a decentralized system of governance that brings power closer to the people, and which consequently leads to more efficiency and transparency.

Finally, the preservation and implementation of the Peace Agreement in the transitional period, as have already been alluded to, rest in the final

analysis on three principles: (a) A responsible and capable leadership that commands a broad base of support; (b) a common national vision, and (c) the development of needed capacities. The continuity of a lasting peace is largely contingent on the maintenance of these principles. However, we should not lose sight of the challenge and uniqueness of the situation in the Sudan.

Umma National Party Assessment of CPA Implementation

Dr. Mariam AlSadig Almahdi

*“If you want to make peace with your enemy, you have to **work with** your enemy. Then he becomes your **partner**.”*

Nelson Mandela

1. Introduction

The CPA Agreement has been reached through a number of foot steps starting with Machakos Protocol dated 20th July, 2002, followed by Agreement on Security Arrangements, during the Interim Period, dated 25th September, 2003, Agreement on wealth sharing, dated 7th January 2004, Protocol on Power sharing, dated 26th May, 2004, Protocol on the Resolution of conflict in Southern Kordofan/ Nuba Mountains and Blue Nile States, dated 26th May, 2004, Protocol on the Resolution of conflict in Abyei Area, dated 26th May 2004 and the Agreement on the Modalities of Implementation of the Agreement, dated 31st December 2004. Thus, the Agreement comprised – as stated in the Declaration on the Final Phase of Peace in the Sudan – the protocols and Agreements already signed, together with the Agreement on the Permanent Ceasefire Arrangements (Annex I) and Agreement on the Modalities of Implementation of the Agreement (Annex II). The Political Forces in Sudan, which have achieved Sudan independence in 1956 and have, along with other civil society organizations, overthrown two military dictatorships by non-violent action in 1964 and 1985, and which have been instrumental in the search for peace and nearly succeeded in 1989, but for the coup d'etat, have been systematically absented from the Peace Process. This process has been confined to the coup makers and the armed parties, who as combatants are necessary for stopping the war, but are not sufficient to build the Peace and structure Government on a democratic basis.

When IGAD mediation started in July 1994, the political map in Sudan consisted of some internal civil opposition to the Regime, and armed conflict between Government of Sudan (GOS) and Sudan Peoples Liberation Movement/Army (SPLM/A). Therefore the IGAD mediation basically considered conflict in Sudan only in terms of a North/South conflict, GOS representing the North and SPLM/A representing the South. The International community became involved in the Peace Process through a forum called IGAD Partners' Forum (IPF), which

included the EU, the USA, Canada and Japan to offer International Diplomatic and financial support.

Between 1994 and 2005, the political and military map changed dramatically as follows:

1. The totalitarian Regime realized the hopelessness of its ideological position by 1997, and in response to the need for change, the regime passed through a series of climb down measures, which reached recognition of political plurality, and recognition of self-determination for the South. Such developments led to the emergence of a strong civil opposition front inside the country. The Umma party, the largest party in the country, the Popular Congress Party, the DUP, the Communist Party and others became active opposition groups inside the country from 2000 onwards.
2. Since 1995, all opposition groups together with SPLM/A reached a common understanding and coordinated military and political activity through the National Democratic Alliance (NDA).
3. The SPLA popularized the idea of marginalization, this plus the increasingly shortsighted policies of the Regime together with the splinter in the ruling party itself, led to the emergence of armed political groups in Darfur by name of Sudan Liberation Movement/Army (SLM/A) and Justice and Equality Movement (JEM). Also “Beja Congress” and “Free Lions” emerged in Eastern Sudan as two new armed political groups.
4. The SPLA harbored extra-Southern ambitions, and its highhanded methods of leadership alienated several Southern groups, which preferred to focus their aspirations in the South and resented the highhanded SPLA leadership methods. They formed Southern Sudan Democratic Forum. One of Dr. Garang’s is the attempt to change the nature of the conflict from North/South to Arab/African. Many Southerners preferred the regional character of the conflict.

These developments taken together indicate that the political map in Sudan had changed so that it shows that:

- a. There are North/South conflicts.
- b. There are North/North conflicts; The GOS does not represent the whole North.
- c. There are South/South conflicts; The SPLA does not represent the whole South.

The CPA of January 2005 was signed as a Comprehensive Peace Agreement on the mistaken assumption that conflict in Sudan is

exclusively between North and South, and that the two negotiating parties represent the two regions adequately. The gap of distrust between the two negotiating parties was very wide. The image that comes through is that of two unwilling negotiators, who were whipped along by an International third party.

Even though when the Peace Agreement was signed, the NUP welcomed the basic building blocks of compromise, which it initially suggested, and explicitly expressed in its statements and documents then:

- *'We speak on behalf of the neglected majority. We welcome peace, which is borrowed from our initiative, yet we want a just and an all-inclusive peace.*
- *We welcome democratization; yet we want it a real one.*
- *We have no reservations on the benefits gained by the South such as equality in citizenship, freewill unity, power and wealth. However, we think that perpetuating the peace agreement entails that:*
- *The benefits of the South be for south; not for a party in the South.*
- *Justice is inclusive of all groups and the whole region.*
- *We are neither attempting to exclude the National Congress Party, nor dealing, revengefully with them. However, we do not condone use of the Peace Agreement as a pretext to continue enforcement of their Islamic version on the Muslim majority.*
- *We also do not accept use of the Peace Agreement as a license to control the North today and in the future”*

Also at the time we pointed out four types of reservations, which we suggested to be addressed in a Comprehensive Conference to make the Agreement really comprehensive, workable, and viable:

- a. Legitimacy can only be bestowed by elected bodies or by National Consensus. A bi-partisan agreement does not qualify and must seek **National ratification.**
- b. We outlined twenty items in the Agreement as being ambivalent and require elucidation in a National Forum, for example, the status of the capital and the problem of Abyei, that need **clarification.**
- c. That there are issues of conflicts, which fuelled the war, and which have not been addressed by the Peace Protocols. There are seven such issues, for example, transitional justice, Nile waters, a protocol on inter-religious affairs, a protocol on cultural matters, a protocol on Accountability, a protocol on international relations and so on. There should have been no problem except for block headedness to accommodate this complementation, since they are only improvements and clarifications within the text of the agreement.

- Only the forth, which provide correction for serious concerns from national perspective not a partisan one, call for revision.
- d. Some items in the Agreement are simple injustices which needed **rectification** to safeguard against adverse complications, and unnecessary obstacles to implementation, namely:
 1. The Agreement they signed will not work for structural and political reasons, they are:
 - a. The Presidency is a Janos-like institution, which gives two sides Vito power on important matters of state. (see appendix 2)
 - b. The plurality of constitutions will encourage a pervasive constitutional power struggle in the center and between the center and regions.
 2. The view of wealth sharing envisaged in the Agreement and in the central constitution is so superficial that it boils down to sharing the proceeds of Southern Oil between two parties, leaving out a more comprehensive attitude to wealth. It will not begin to address the grievances of regional development imbalances. It will put a lot of liquidity into partisan political hands and so perpetuate the present abuse of oil revenues and add to them. Oil revenues, which are not linked to specific development programs, will simply reproduce the corrupt African oil scene.
 3. The Agreement left no room for accommodating other political and military forces in a fair way. The Agreement is a straight jacket, which does not allow for accommodation of any other opinions and interests.
 4. The Agreement deprives any who oppose it peacefully of their political rights, and so contradicts the Charters of International Human Rights, which it pretends to uphold. (actually it is materializing now in Political Parties Act being presented to the National Assembly)
 5. The percentages of power sharing would be acceptable if they give two thirds to the North and a third to the South to allow for a North/North dialogue and a South/South dialogue to share between the parties. If this might not be necessary for some of the political parties who accept the two parties having lion's share in power at the first interim period, it will be by no means acceptable for the warring groups in Darfur and in the East, who are putting justice in power sharing as one of their main targets.

6. The view of how the National Armed Forces are going to be constituted of two partisan armed groups is unworkable and will cause massive justified resentment.
7. The formation of the seven independent commissions is vague; they will become bones of contention in a power struggle. When constituted, they promise to become platforms for a parallel government adding fuel to the power struggle.
8. The compromise to apply Islam in the North, and Secularism in South would be acceptable, but the CPA envisages Islamic application as defined by the minority ruling party. This is unfair and unacceptable. The view of Islam, as expressed by the Regime, has been disowned by its own authors. Its functioning has been widely discredited. It should be rectified rather than confirmed as the CPA envisages. There is no justification why the majority of Muslims in Sudan should accept this travesty of justice.
9. The Agreement envisages the continuation of its provisions in the future if the Peoples of Southern Sudan choose unity. This confiscates the Democratic rights of the People of the Sudan at present and in the future. It perpetuates the diarchy of two parties, whose title to power is the gun.

The International Community under American leadership has managed successful mediation, arbitration and pressure with carrots and sticks. Their role deserves recognition because without it, the present Agreement would not have been reached. However, the International Community committed the unforgivable mistake of giving the two parties the impression that what they have signed is a Comprehensive Peace Agreement, and giving them the assurance that the concessions they made are the last they have to make. Nothing could be further from the truth. Substantial concessions will have to be made to accommodate the other political forces, to accommodate the other armed forces, to accommodate Darfur, and the East if the Peace Agreement is to become comprehensive.

The National Congress Party (NCP) has assumed that its share of power empowers it to continue its partisan control of all state institutions, to perpetuate its strangle hold on the economy, to continue with the partisan manipulation of the National media and to continue the role of the NCP as the guardian of totalitarianism. Totalitarianism is being perpetuated by the partisan manipulation of state institutions; the pervasive security institutions and corruption. No wonder the present setup is being

described as another edition of the Alingaz Regime. Without amendment, it is not moving beyond the Agreement of its two negotiators, besides creating new complications and aggravating the already existing ones.

Another remark we made was that the CPA laid the foundation for international protection and it represents an abandonment of the concept of national sovereignty. We, the people of Sudan accepted this internationalization out of objective necessities. Some Sudanese officials talk about national sovereignty as if it exists as normal though that is not true.

According to the CPA, the Sudan case has been internationalized by virtue of the both parties to the agreement asked the UN to take an inclusive and detailed role in monitoring and implementing the agreement according to the optional Chapter Six of the UN Charter, which UN Security Council (UNSC) accepted and implemented, and formed the United Nations Mission in Sudan UNMIS [Resolution 1590]. According to its mandate as detailed in the UNSG report to UN SC on the 31st of January 2005 (to conduct tasks quite similar to those in UNSC Resolution 1706), including:

- International training of Sudanese Police Force
- Inclusion of UN representative in the Ceasefire Political Commission, the Joint Military Commission and UNMIS in creating political consensus over the CPA (the Comprehensive Political Conference).
- Both parties plus a U.N. delegate shall resolve the issue of the other armed groups.
- The Armed Forces of the Southern Sudan shall be financed by foreign sources.
- Disarming and mobilization of forces shall be under international supervision.
- Dissemination of the information about CPA, and creating culture of peace, with UNMIS having its own radio station and media.
- Monitoring Human Rights all over Sudan.
- The process of rehabilitation and development be, according to Oslo conference resolutions, under international management.

All this, in addition to the international role in resettlement of the displaced, refugee affairs and humanitarian relief activities, judiciary system reform, civil service capacity building and rehabilitation, and Sudanese women mainstreaming. Besides, it is known that all operations

related to ceasefire, protection of civilian and different peace projects are given to foreign, regional or international parties in Kenya resorts, Abuja, Cairo, Tripoli, and Asmara.

So, we have pointed out before and after the signing of the CPA that:

- a. The CPA is not a Comprehensive Peace Agreement, and it is a necessary step towards peace in Sudan but not sufficient.
- b. The Constitution and the Government based upon it, if they persist, will establish a diarchy and not National Consensus.
- c. The situation in Darfur will only deteriorate further unless three measures are undertaken immediately, namely; confidence building measures, which start by replacing the senior administrators in the three Darfur states, a better qualified peacekeeping force both in terms of numbers and competence, and an All-Darfurian Conference to find a political resolution above the CPA ceilings.

This was the critique we repeatedly presented to all parties of the negotiations; nationals and internationals, all through the process of peace negotiations and thereafter.

In addition to what we have assessed, and anticipated the implementation of the CPA has been hampered by:

- Lack of good faith and absence of political necessity for the ruling NCP
- Lack of capacity of the SPLM/A, aggravated by the death of its late Chairman, Dr. John Garang.
- The needless confrontations. The NCP is lobbying against the International Community, which is the third partner to the CPA and its major guarantor. The dispute between NCP, and the international community over the role of AU and UN troops in Darfur, created many other serious polarizations; within the NCP, between the NCP and its partners (SPLM and SLM), and between the NCP and the opposition parties.

In his report, September 2006, UN Secretary-General said, "*many of the most important promises made under a peace deal that ended a 21-year civil war in Sudan's south have not been met, threatening to plunge the long-suffering region back into violence*", The dire assessment of the situation, means that the two signatory parties have fallen well behind on plans for elections and are not sharing power and wealth as called for in the agreement. UNSG Report continues "*While they are observing their security commitments reasonably well, the implementation of several*

other major provisions of this agreement has fallen behind schedule," "Disappointingly, implementation of the (Comprehensive Peace Agreement) provisions appears to be selective".

There has also been little progress in establishing human rights commissions and disarming fighters. Sudan's parliament has shown little inclination to pass a draft of legislation necessary for the peace deal to be carried out in full. Nonetheless, Annan recommended that the UNSC extends the mandate of UNMIS in Sudan. The force also facilitates the return of refugees, conducts de-mining efforts, and monitors human rights. Throughout the report, Annan criticized Sudan's government for its behavior toward civilians and the peacekeeping force.

Following a statement by a leading member of the NCP, Ibrahim Ahmed Omar, in which he said if there were a military confrontation with the UN forces in Darfur, the NCP would cancel the CPA, the SPLM accused the NCP of violating the peace deal. Omar also condemned the SPLM stance in favor of the UN takeover from the African Union forces in Sudan's troubled region of Darfur.

Almost two years since the CPA was signed. And Sudan is still suffering severe internal polarization culminating in confrontations with the international community, increasing areas and types of conflicts, and more deterioration in security situation and worsening humanitarian situation in Darfur. In the following sections we will survey the implementation of each of the aspects of CPA:

1. The Security Arrangements:

- a. The security arrangement legalized the existence of two armies during the interim period as the most important guarantee for stability and the implementation of CPA. A 40-thousands Joint Integrated Units of equal numbers from SAF and SPLM to be deployed in Southern Sudan, the two areas, the national capital and Abyei. While the SPLA, the armed wing of SPLM, was fully involved in the security arrangements, the SAF as an institution was not.
- b. The Agreement (article 16-3) stated that *the Armed Forces in the Interim Period shall be professional and non-partisan. It will consist of the two Armed Forces and the Joint/Integrated Units.* In reality, within GoS encouraged splinter groups to breakaway from SPLA and encouraged tribal and personal rivalries, and the SPLA on its side harboured its own militias. This led to the

emergence of numerous armed militias allied to GoS and opposed to SPLA, and vice versa. The militias supported by GoS were grouped together by the name of Southern Sudan Defence Force (SSDF). There are also as well other armed groups of the NDA, Beja, Rashayda (Free Lions), Umma party, and Darfur armed groups. Besides, although the CPA states that SAF and APLA will form a military alliance, the Armed forces remained partisan organization, the allied forces maintained too different doctrines, and continuity of armed groups such as the SSDF, apart from, and as an extension of, the Sudan Armed Forces (SAF), poses a major threat to the SPLA and to the peace process.

- c. The CPA brought a formal end to the state of hostilities between the Government of Sudan (GOs) SPLM/A, but it did not end the many internal conflicts in southern Sudan. A critical element in that on-going process was the Juba Declaration of 8 January 2006 between the SPLA and the GoS-allied South Sudan Defence Force (SSDF) which is a broad amalgam of armed groups, founded 1997. Following the Juba Declaration, a large majority of the SSDF soldiers joined the SPLA and SSDF Chief of Staff, Major-General Paulino Matieb, was appointed deputy to Salva Kir. However, despite those arrangements, from time to time skirmishes between the two sides occur, most important of which was in the Malakal, claiming 150 lives, both military and civilians
- d. Since its founding the SSDF provided security for Sudan Armed Forces (SAF) garrisons in the south and for the oil fields. Also the rump SSDF remaining in the SAF camps have occasionally caused local level security problems.
- e. According to the UNSG Report Sept 2006, the information provided by SAF to the United Nations is radically insufficient, and this poses an extremely serious obstacle to UN peace support operations.
- f. Within the national capital, Khartoum, there is the security dilemma caused by the asserted lack of balance and inclusiveness in the recruitment of law enforcement agencies and the disparity in their composition at the non-commissioned and commissioned ranks and institutions, the reform of which poses a major challenge and a threat. Many incidents occurred; the events that followed the death of Dr. John Garang, Soba events, the murder of journalist Mohamad Taha and other similar accidents, confrontation between the SLM and the police, and

the killing of policemen in Jebel Awlia by some SPLA members. All these are manifestations of how serious the situation is and/or how deficient the security arrangements on the ground are.

- g. The Security arrangements of CPA don't acknowledge many armed forces outside of SAF and SPLA. Such groups are resisting the disarmament, the violence and conflicts already started, while SPLM accuses SAF of supporting these militias (the killings around Juba, and lately the fighting that took place in Malakal killing hundreds of civilians and military personnel).
- h. The Arab tribes living at the border between the North and South are supposed to give in their arms to SPLA. They refuse such settlement, and armed confrontations already started (South Kordofan).

As a result of the serious gaps and erroneous assumptions in the security arrangements, there are new types of wars taking place and others evolving:

1. The peace agreements (CPA, DPA, ESPA) all recognize the demands of armed groups, and totally ignore non-armed groups and civic organizations. The CPA has set the precedent of recognition through armour and of defining marginalization as synonymous to rebellion. One result for example is, whereas Southern Blue Nile is by no means worse of in terms of development, services, and powers sharing than Northern Blue Nile, its grievances were recognized by virtue of being under the SPLA, thus setting the example for any group or area in Sudan to demand their rights by the might of arms.
2. Armed conflicts have been transferred from rural areas into towns (AlFashir, Nyala and Khartoum). Most militias and armed forces are staying in major cities, as per agreements, with many incidents of violence involving use of arms.
3. Several IDP groups that were repatriated returned back because of insecurity (conflicts and land mines) and/or lack of basic services and sources of livelihood. Forced repatriation, especially of those who are integrated in the market in the North is expected to lead to violence.
4. The most contentious issue between GoS and GoSS, that of Abyei remained unresolved despite the Abyei Protocol of CPA and ABC experts report¹.

¹ The ABC report which was supposed to be final and binding according to the CPA, was totally rejected by Misseriya and GoS and fully adopted by Dinka Ngok and GoSS. That led in early 2008 to a bloody confrontation between the two, that destroyed most of

5. Instability along Sudan borders e.g. Uganda, Central Africa, Ethiopia and Eritrea and Chad opens the space for war by Proxy.

2. The Power Sharing Arrangements:

Contrary to the CPA declared objectives, the Articles of the Agreement establish a bilateral deal. Its main pillars

- a. An interim arrangement, with 80% majority for the two partners, securing 52% mechanical majority for NCP, in all central executive and legislative bodies.
- b. The Interim National Constitution (INC) was adopted in June 2005 and a Government of National Unity (GNU) was formed and signed it into law by President El Bashir on July 9th 2005.
- c. The Institution of the Presidency was established on July 9th 2005 when Dr. John Garang de Mabior was sworn in as First Vice President of the Sudan and President of the Government of Southern Sudan (GoSS), a position taken by Gen. Salva Kiir after his tragic and sudden death.
- d. The National Assembly was formed on August 31st 2005 comprising of 234 seats for the ruling NCP (52%), 126 seats for the SPLM (28%); 55 seats for Northern political forces; 27 seats for other southern political forces and 8 seats for national personalities. All the National Assembly Committees were allocated according to the power-sharing formula.
- e. Government of National Unity (GNU) was announced on September 20th 2005 based on the CPA power-sharing formula, with 28 federal ministers, a large number of advisors to the president (for the NCP members who left their ministerial posts), putting huge financial burden on the treasury, 26 state Walis, and 8 state ministers and advisors in each state.
- f. Government of Southern Sudan GoSS was formed by the First Vice-president and president of GoSS on October 22nd 2005, the composition of which lacks inclusiveness, as many smaller political parties and tribes are not represented, Southern Muslims are excluded and only 2 of the 22 ministerial portfolios were held by women although the ICSS gives women 25% of all posts.
- g. Transitional Southern Sudan Legislative Assembly with was appointed, composed of 161 members: 110 SPLM, 25 NCP and 26 for other southern political parties

Abyei town, displaced people and caused loss of lives, forcing the two parties to agree on taking the issue to the International Court of Justice in the Hague.

- h. The Constitutional Court was established on 24th December 2005, and justices named in November 2005.
- i. Commissions and Specialized Funds: There was considerable delay in the establishment of commissions and national institutions as stipulated in CPA and its implementation modalities. However, 10 specialized commissions and committees were formed including the Assessment and Evaluation Commission (AEC), Fiscal and Financial Allocation and Monitoring Commission (FFAMC), The National Judicial Service Commission, the two Multi-Donor Trust Fund (MDTF) for North and Southern Sudan ..etc.

The establishment of the commissions, though not complete, was slow and with many other difficulties. The enactment of the National Judicial Service Commission Act, while properly passing through the National Assembly, bypassed NCRC. SPLM has criticized the Act, contending the procedure; also key aspects of the law were not in conformity with the provisions of INC or ICSS. The chairperson of FFAMC resigned in February 2006 over, among other things, the issues of lack of resources and clear mandate of the commission

2. Legislation and the INC:

Any lasting peace agreement in Sudan must provide meaningful guarantees for the protection of the human rights of all segments of Sudanese society including their rights to participate in post-conflict political processes, and secure rule of law. The current national assembly; failed till now to enshrine most of the laws needed to secure the basic freedoms and rule of law. Even the numbered laws it enshrined; were not given the appropriate time to be discussed by its members

3. The INC, the Laws and Democratic Transformation

a. Delays in annulling dictatorial laws: The creation of a transparent legislative and judicial institution is important for reconciliation, and the establishment of trust. In accordance with the CPA many existing legislations have to be revised to conform with the interim constitution but as the ruling National Congress Party (NCP) has the majority in the National Assembly and the Council of States (Senate) it usually hinders a swift revision of the laws. Among the concerned laws, there are laws related to the civil service, national security bill, the press, trade unions.

In a press conference, August, 2007, the Special Rapporteur for Human Rights in Sudan, Sima Samar, stated that Sudanese government has made no progress in the democratic transition process and nothing has changed

on law reform related to the democratic transition and the Comprehensive Peace Agreement. “*Legislation which is in violation of the Interim National Constitution and international human rights standards is still in place*” the UN envoy said. “*The April to July session of parliament made no progress regarding reform of important laws including the Criminal Act, the Criminal procedure Act, the National Security act, the Armed forces act, the Press and Publications act, the Police forces act and the National Human Rights Commission bill*” She further added and deplored the limited consultations with the Sudanese civil society over laws related to the democratic transition.

b. Old Laws Supremacy over INC: The experience of the opposition parties and civil society organizations, in the peaceful demonstrations against the increases in the prices of fuel and sugar late August and September 2007, and aggression shown by the police, security personnel and the judiciary against demonstrators, represent a living evidence for the contradiction between the implemented laws and INC, and on how totalitarian laws still override the Interim Constitution in which expression of opinion and peaceful demonstration is a basic right. Besides, the double standards in applying the laws, at the same time the NCP-supported demonstrations denouncing the transformation of AU troops in Darfur to UN were swamping the streets of Khartoum¹.

c. NCP-SPLA Conflicts in Interpretation: Disagreements between the CPA signatories was also public on interpretation of INC and its implementation. For example, in November 2007, a debate took place between the Federal Minister of Justice and the Minister of Legal Affairs and Constitutional Development of South Sudan Government, Mr. Michael Makwai, who accused the Federal Minister of Justice of hampering the implementation of southern states’ constitutions. In fact, late November 2007, Central Equatoria and Lakes States signed their constitutions without waiting for the approval of the Federal Ministry of Justice, the thing that Federal Ministry considered a violation of the INC.

d. New law preempting INC Guaranteed Rights: Several of the laws that were passed by the Transitional Assembly included articles that deny citizens basic rights stated in the INC, including the important laws upon which depends the democratic transformation such, as for example:

¹ In addition to protecting freedom of expression, the INC states that the National Security is an advisory body to the executive bodies, collecting and analyzing information.

- a. The Organization of Humanitarian and Voluntary Work Act (2006) which applies the same rules to both national and foreign organizations
- b. The Act for National Human Rights Committee which is inconsistent with Paris Principles for the national institutions for human rights.
- c. The Act of Political Parties which is also a patronizing Act, inconsistent with democratic principles and values, (cf. Article 7, 18, 29 etc..)

All these laws were passed using the mechanical majority provided for by the INC.

4. Disputes between NCP and SPLM

The two most common areas of recurrent disputes and differences between NCP and SPLM, from within the CPA, are Abyei and the oil revenues. Other types of disputes generally relate to policies and governance matters. SPLM member and Cabinet Minister Deng Alor, accused the NCP of hindering the formation of commissions meant to implement the CPA. *"Implementation is very slow. On other issues the implementation is not taking place at all. Because of the oil,"* Alor told Reuters, July 2006.

In July 2007, Pagan Amum, SPLM Secretary-General told IRIN that "There are very serious aspects of the CPA that have not been implemented and could result in the entire CPA collapsing and the resumption of war. These include North-South border demarcation as the commission has till then not convened.

The third contentious issue is the oil-money transfers. Although the south is getting its 50% share as per CPA the calculations are doubted by SPLM, because the south is not participating in the management of the oil industry, so it only receives what the NCP decides.

The violations of CPA resulting from NCP continued support for other militia groups in southern Sudan; including for example, Ismael Kony's troops in Jonglei, Gordon Kong in Upper Nile, Tom Al Nour in Western Bahr El Ghazal, and the remnants of the EDF in eastern Equatoria. On its part, the NCP (Minister of Defense) accused the SPLA of violating the peace agreement. In August 2006, the SPLA Director of Operations, General Piang Deng, accused the federal ministry of energy and mining of financing militias in southern Sudan.

5. CPA and Eastern Sudan Peace Agreement (ESPA): With the Eritrean mediation, the ESPA was signed between the GoS and Eastern Front (formed mainly of the Beja Congress and the Free Lions rebel groups), in October 2006 in Asmara, ending the armed conflict in eastern Sudan.

The agreement in form runs in line with CPA, yet in content, it is much different, especially with regard to power and wealth sharing and lack of international guarantees for implementation. Some ambiguities in the text and disputes among the leaders of the factions forming the Eastern Front have greatly hampered the implementation of the agreement. There is also no commitment by any international donor to assist in the rehabilitation and post-conflict recovery programme. Eastern Sudan People Conference that is supposed to generate consensus and legitimize the agreement is yet to be convened.

6. The Census and Elections:

The Central Bureau of Statistics started training programs in preparation for population census, which is supposed to start its pilot in November 2006. The Center for Peace studies of Khartoum University presented the public opinion and CRC with a draft Election law, now under discussion by wide range of civil society groups.

The timing of the election according to CPA is meticulously scheduled; as the interim period (IP) started on 10th of July 2005, the political parties Act, and the National Electoral Law were supposed to be enacted within six months of IP, and the establishment of the National Electoral Law Commission within one month of adoption of the Electoral Law. None of them is enacted or established till the writing of this article.

7. Wealth Sharing: CPA & Oil:

From the beginning we have said; that the definition of wealth was not comprehensive, it meant the Oil of the South only rather than all types of wealth in Sudan from all regions. Which reflected the interest of the international community, and the greedy attitude of partisan interest, rather than responsible attitude of a committed government towards the benefit to all citizens and the welfare of all people of Sudan.

In October a two-day governors' conference on the country's oil industry was told that Juba, the capital of the Government of Southern Sudan, is still plagued by insecurity while the political elite in Khartoum and Juba were accused of waiting in the wings to pocket oil dollars. This was the

first soul-searching meeting since the January 2005 Comprehensive Peace Agreement that was signed in Nairobi signifying the end of two decades of fighting. Both the national government and the Government of Southern Sudan were asked to lift all confidentiality clauses on oil contracts and to incorporate all state revenues and expenditures into the country's budget and make them public as agreed in the the January 2005 Comprehensive Peace Agreement. But government representatives insisted that the money was on budget and had been disbursed. The undersecretary in charge of the national economy at Sudan's Ministry of Finance, Alsheikh Almak, said the share transferred to the government in the South from oil exports between January and August was \$571.37 million, while for August alone it stood at \$98.2 million.

The share has been rising steadily as the total direct transfer to Southern Sudan from January to April amounted to \$348.81 million. Mr Almak said the transfer for petrol revenues for May stood at \$93.1 million. But as the dollars flow in, the avenues of grand corruption are expanding. The reality of how corruption has seeped into the government was brought home by the suspension of five senior Ministry of Finance officials suspected of buying vehicles at inflated prices.

Southern Sudan President Salva Kiir suspended Finance Undersecretary Isaac Makur, Economic Planning Undersecretary Francis Lotio, Director of the Budget Peter Laany, Director of Taxation Micheal Abola and his deputy Tilet Plating over the scandal. As the oil conference was going on, local newspapers were awash with stories of insecurity. The Juba Post reported that 23 people had been killed in separate incidents within one week.

With such scenarios: "In recent months, Khartoum intensified its military ties with Beijing and Moscow. Over 50 pilots are now training in China to man helicopter gun ships which Khartoum is planning to buy. It may be recalled that these helicopters were instrumental in depopulating the oil fields during the war with the SPLA. Additionally, Khartoum's Minister of Defense, Abdul Rahim Mohammed Hussien was recently in Moscow to conclude a \$ 1 billion deal for the Sudanese military. My guess is that these moves are strategic preparations for the upcoming battles of borders and Oil fields. The next war will essentially be a war of resources- particularly Oil."

The deadlock over the status of the Abyei region, was attributed to the oil issue as it contains one of Sudan's two largest oil fields. Sudan pumps around 500,000 barrels per day of crude.

8. Darfur Peace Agreement (DPA):

Although for the last four years the attention of the international community was focused on Darfur crisis, no political resolution for the crisis is in sight. The DPA signed in Abuja on May 5th 2006 did not only fail to bring peace to Darfur but led to its intensification. The CPA represented a ceiling that contributed to the failure as the main disagreement was over the issue of compensation, not included in the CPA. Other reasons include the NCP insistence on maintaining the status quo in Darfur through its retail approach to the resolution of the problem and preserving the same political leadership accused of supporting atrocities and impunity lacking capability.

The DPA was signed without reference to the viability of implementation. The result was the fractioning of the rebel groups, the thing that makes it more difficult to reach agreements, makes it difficult for AU troops to protect civilians or win their confidence, protect themselves or to observe the cease fire. The war has even spilled over on Kordofan and to Chad.

The declaration by the International Criminal Court (ICC) prosecutor Moreno-Ocampo in November 2006 that he is close to launching prosecutions against suspects believed responsible for atrocities including murder, rape and torture in Darfur, has complicated the situation and made its resolution more distant. The ICC prosecutor is expected to present the case to judges at the court to decide whether to file charges and once that has been done, warrants to arrest suspects will be made which is again expected to put the government in collision with the international community and push further the prospects of solution to Darfur crisis.

One of the implications of that was the argument and resistance to the UN/hybrid force to replace the AU forces that proved ineffective in protecting civilians. Sudan government repeatedly rejected UNSC resolutions about UN peace keepers, against the consensus among all opposition parties that stressed the need for an effective force and the AU declaration of its inability to accomplish the mission, due to deficient mandate, shortage in

finance and logistics and the deteriorating humanitarian and security situation.

9. CPA and International Community:

The International Community, represented by Danforth, in his hurry for a quick deal and a trophy to his president before the presidential elections, did put a lot of pressure on the SPLM and GoS during Nivasha talks to accept many solutions today we see unimplementable, most important of which is the Abyei commission. Zoellick did the same during the last week of Abuja talks.

The implementation process has been an uphill battle, with the NCP exploiting the gaps within the CPA and the weaknesses of its junior partner, the SPLM, to delay and frustrate the process. It has largely succeeded in keeping the international community at bay with regard to CPA implementation by selectively implementing elements of the agreement without allowing for any weakening of its grip on power or any fundamental change in the way the country is governed. Such strategies are not sustainable, and will ultimately lead to renewed or increased conflict between the two parties

The gap of confidence between the negotiators in the IGAD process has necessitated a role for the UN, which is envisaged in Resolution 1590. The UN observation, follow-up and rectification role as a standing umpire between the two parties to the CPA is well appreciated. However, we, the un-represented Peoples of the Sudan, look forward to UNMIS to fulfill the role of achieving comprehensive peace and democratic transformation in Sudan. The International community is now involved in Sudan in a big way, armed with numerous UN Resolutions especially: 1590, 1591, and 1593.

The gulf of distrust between the GoS and SPLA, and the Human Rights abuses of the GoS has, among other things, almost put the Sudan under UN protection. The partners to the CPA look up to the international community to bridge several gaps between them. The Peoples of Sudan who are not represented in the CPA look up to the international community to mediate between them and the ruling parties especially in the areas of protection of Human Rights and basic freedoms. Yet, in the face of all of this, the international community has remained largely silent. Heavy on monitoring but weak on follow-through, the international community – particularly the key countries involved in the negotiation of the CPA – has not yet embraced its role as a guarantor of

the CPA, and continues to lack a consistent, coordinated approach to dealing with the signatory parties, let alone holding them to their respective commitments.

The CPA process and its International guardians have systematically sought to marginalize other political organizations. The only other groups, to which they give any attention, are militias and tribal entities. This pattern may serve the CPA partners interests in eliminating political competitors. It does not serve the country, because it only encourages groups to seek to serve their interests in military terms and/or tribal entities. It does a great disservice to the cause of democracy.

After almost two years, the International Community are still holding to their *Simplicity Theory* of recognizing only the two parties, and militias and tribal entities with military might and approach in spite of the clear failures in implementing CPA and the violations of the INC by GNU. All was long anticipated by the opposition parties, and regardless of the apparent presence and active role of the opposition parties, the International community is still not giving them the due attention, except for some sporadic meetings and non-committing consultations. In fact, the international community, the partner in CPA and DPA, who has been observing and monitoring the smallest detail about what is going on in Sudan, failed to release a single statement when the security forces brutally attacked the peaceful rallies against the unjustified fuel price rises in Khartoum and El Obeid, which was a flagrant violation of the NIC and the CPA.

To resolve the conflicts in Darfur and the East, the NCP Government previously had insisted upon resolving them within the parameters of its own policies. The new government, which shows little evidence of newness, GNU is under the hegemony of NCP and insisting upon resolving them within the parameters of the NPA. Both parameters are inadequate. The International Community is expected to do more homework to help the process of just and comprehensive peace in Sudan. In fact it is obvious now that the so-called Government of National Unity is facing a steep uphill challenge in implementing the NPA. Their petty power struggle earned them ridicule; an example of that is the issue of alleviating poverty.

The JAM plan, which was formulated as part of CPA requirements, focused on the MDGs and gave attention to poverty alleviation, which is so vital in a country where over 90% of its people are living below the

poverty line. However, the plan implementation so far focuses on the shares of CPA signatories in wealth and power, to the neglect of other issues, including the MDGs to which the UN has committed all its member nations.

The Oslo Conference of April 2005 was a welcomed occasion. It is expected, according to the JAM plan presented and agreed upon in the conference, that Aid for Sudanese reconstruction and development will be disbursed through Multi-Donors Trust Funds MDTFs administered by the World Bank, and a considerable fraction of the grants are directed to these multilateral bodies, also a huge amount of it will only be available when genuine peace prevails. That plan was well searched amongst its constituencies and it was tightly scheduled for reconstruction activities, but unfortunately its voluntary nature, led to the current situation where it seems to lack the required executive proceedings.

However, the JAM programs and priorities, set by the CPA parties, the UN and the World Bank and approved by the donors, are not sufficient. National participation is necessary. Therefore, it is necessary to convene a National Economic Conference to ascertain the economic problems of the Sudan and plan the deployment of National and International resources to resolve them in the right set of priorities.

Other issues in which the international community has a role to play in relation to sustainable peace in Sudan relate to regional security and democratic transformation. Free and fair elections are the best means to settle political differences peacefully. That demands a just electoral law, a neutral electoral administration and a competent electoral observation. Also security in Sudan is very much affected by security in the region. Over the last two decades, security in the Horn of Africa has become organically interrelated and a UN sponsored Regional Security pact is imperative.

9.1 UNMIS; Good or Bad?

On 10 January 2005, immediately after the signing of the peace agreement, the UN Security Council, in a press statement, welcomed the move and pledged to expeditiously consider international assistance, including the deployment of a peace support operation in southern Sudan. On January 31st 2006, the UNSG recommended the deployment of a multidimensional peace keeping force of up to 10,000 military personnel and 700 police officers.

On 31 August 2006, the UNSC issued its resolution 1706, to expand the UNMIS mandate to include its deployment to Darfur, without prejudice to the mission's existing mandate and operations. The Council invited the consent of the Sudanese GoNU, called on Member States to ensure expeditious deployment and requested the Secretary-General to ensure additional capabilities to enable UNMIS to deploy in Darfur. The Council decided that the mandate of UNMIS would be to support implementation of the DPA and the N'djamena Agreement on Humanitarian Ceasefire on the Conflict in Darfur by performing a number of specific tasks. Furthermore, acting under Chapter VII of the United Nations Charter, the Council authorized UNMIS to use all necessary means as it deemed within its capabilities to, among other things, prevent disruption of the implementation of the DPA by armed groups, without prejudice to the responsibility of the Government of the Sudan, and to protect civilians under threat of physical violence. The Council decided that UNMIS would be strengthened by up to 17,300 military personnel and by an appropriate civilian component including up to 3,300 civilian police personnel and up to 16 Formed Police Units. The Council expressed its determination to keep the Mission's strength and structure under regular review, taking into account the evolution of the situation on the ground. By further terms of the text, the Council requested the Secretary-General to consult jointly with the African Union, in close and continuing consultation with the parties to the DPA, including the Government of National Unity, on a plan and timetable for a transition from AMIS to a United Nations operation in Darfur.

Up till now UNMIS monitoring of the CPA can be described as follows:

- a. Monitoring focused on CPA signatories and issuing a monthly report, but not evaluating the process of peace in Sudan.
- b. The monitoring has been partial, as major stakeholders, political parties and civil society, are not included nor considered.
- c. This monitoring has been seeking to satisfy the prospective of CPA regardless of its stumbling, and adopting reconciliatory approach to the aggression of NCP in spite of the obstacles facing UNMIS task, (Two UNMIS officials were expelled because of their follow-up of the human rights violations committed by security personnel during the opposition demonstration in 6th September. To which UNMIS abided, and made no objection, so later came the expulsion of Mr. Jan Pronk the UNSG representative in October 23rd 2007).
- d. The capacity building to the civil society in the field of human rights, sponsored by UNMIS, for example, has been very useful. Yet, there was no standard plan or programme to conduct it but was rather

dependant on the personal capacity of the official in charge, her/his initiative and enthusiasm.

After UNMIS (previously UNAMIS) stayed in Sudan for more than 30 months, we expect of them more than ticking the right or wrong mark on the implementation modality tables, to be more outgoing in making assessments and evaluations that are more comprehensive and analytic.

9.2 The expulsion of UNSG Representative, Jan Pronk:

In October an isolated move was taken by NCP to expel Mr. Jan Pronk, who has for more than two years served as UNSG Special Representative for Sudan. The unilateral decision by NCP to expel Pronk dangerously exacerbates severe tensions within GoNU in Sudan. Indeed, the move indicates that NCP handling of important national matters does not involve consultation with or consideration of other political views or constituencies in Sudan. Also giving serious signals of lack of respect to Sudan's international commitments, especially with a central stakeholder in the peace process and development in the whole of Sudan like the UN.

10. Conclusion

"There is a growing sense of frustration and disappointment among the people about what they perceive as a lack of progress in the implementation of the Comprehensive Peace Agreement (CPA),"

Tom Vraalsen

Chair, Assessment & Evaluation Commission

Apart from the structural weaknesses of the CPA Agreement, and the fact that negotiations have sacrificed National interests for partisan cupidity, the Government of Sudan now tops the failed states index and is close to the top of Corruption Perception Index (CPI). The track record of the two parties is replete with authoritarianism, corruption and bad governance. The 2006 corruption perception index of Transparency International gives the Sudan very low marks, ranking it the forth from the bottom. In view of the situation described above, there are three scenarios that may take place in Sudan:

1. **Maintaining the status Quo:** A sharp polarization of the political body in Sudan, which will have a negative impact on peace building and democratic transformation in the country as well as an unnecessary polarization between Sudan and the International Community. In all types of the ongoing polarizations, the NCP, to a great extent, is the common factor as it is seeking only to keep the basis of its regime that was built before the CPA.

The government's lack of strategy, internal schisms, its international criminalization, its national and international isolation, in spite of the signed peace agreements, all constitute a recipe for continuous decline and failure, the thing that makes it incapable of delivering on its obligations. That will not be stopped by describing as comprehensive agreements that are not, governments, which have little to do with National unity as governments of National Unity, and processes that are not inclusive as inclusive. To continue with this surrealism will only perpetuate decline and lead to the Somalization of the Sudan. The vacuum and tragic events eventually leading to a total UN mandate in Sudan OR There are two alternatives to this dark scenario.

2. **A compromise arrangement** based upon an All-party agreement to honour the building blocs of peace like self-determination, governance and power and wealth sharing, popular participation, legalizing opposition and breaking down all aspects of authoritarianism and corruption. This alternative demands the guarantee of human rights as defined by the International Charters; guarantee the national - not partisan - nature of state institutions and free and fair elections within the CPA stated schedule to allow the peoples of Sudan to decide upon the controversial issues.
3. **A plan for National Regeneration** to be hatched by a Comprehensive National Forum to develop the bilateral Agreements to become national, to outline a programme for genuine democratization, to select a truly National Government. A CODESA-type conference, which would transform the bilateral Accords into National Accords. All the agreements need to be comprehensive and inclusive, by giving all stakeholders a part in the national process of transition towards peaceful, democratic, and united Sudan. There is a need for regional fora, such as South-South, East-East, Darfur-Darfur, and North-North Dialogues, to precede this comprehensive national conference. These regional fora to discuss in details the problems specific to the regions, and consolidate common positions on the National process.

All Sudan's neighbours as observers should attend such a national gathering, because as things stand at the moment, some of our neighbours are fuelling proxy conflicts in Sudan and GoS is paying them back in the same currency. In fact, the regional situation is now so complicated, that Sudan's National Peace Plan must be accompanied by a Regional Peace Agreement. Both plans call for UN involvement if we

are to avoid half-baked solutions which unravel as quickly as they are tied. Rather than spending valuable energy in the promotion of vulnerable Agreements, the UN should seek to promote workable ones.

Finally, the political scene in Sudan as we see it and the CPA in its current status:

- Is not proceeding, or getting properly implemented;
- Is not bringing Sudan peace, unity, nor democratic transformation;
and
- Is making a stumbling block on the way of resolving other conflicts in Sudan.

The CPA and the DPA Peace Agreements
a comparison of impact on Sudan's peace process

El Haj Warrag and Hassan Abdel Ati

1. Introduction:

In Nivasha (Kenya), the government of Sudan (GoS) and the Sudan People Liberation Army (SPLA) signed a peace agreement on January 9th 2005, known as the Comprehensive Peace Agreement (CPA) ending half century of civil war in southern Sudan. In Abuja (Nigeria) The GoS also signed with one faction of the Darfur rebels a peace agreement known as Darfur Peace Agreement (DPA) on May 5th, 2006.

This paper attempts to highlight the similarities and differences between the two agreements, assess their strengths and weaknesses and their impact and benefits to the concerned groups and the Sudanese society at large. For the latter, the perspective is one that upholds the values of democratic transformation, respects of human rights and social justice, which are seen as the basic pillars for a sustainable peace and united Sudan.

2. The Comprehensive Peace Agreement (CPA):

The CPA is considered one of the longest negotiated agreements (14 years) and one of the largest in volume and very detailed almost in every aspects it contains. This reflected from the start the lack of trust between the two parties. The agreement was very much processual and has been preceded by signing a number of protocols that ultimately formed the body of the agreement. These protocols included:

1. Machakos Framework protocol, July, 2003
2. Security Arrangement protocol, September, 2003
3. Wealth Sharing protocol, January, 2004
4. Power Sharing protocol, May, 2004
5. Abyei, Nuba Mountain and Blue Nile areas protocol, May, 2004
6. The Final Cease Fire Agreement , December, 2004

As a document the CPA, at the general level

1. asserted basic rights and freedoms in line with the universal standards and declarations (Power Sharing protocol, section1, subsection 6),
2. established a real federal system for southern Sudan, South Kordofan and the Blue Nile and established criteria for representing the South in the federal institutions according to population size and

- allocated specific ratio of national resources (oil) to the various government levels (federal, state, locality),
3. reaffirmed the inclusion of the basic rights and freedoms in the federal system of government in a democratic constitution which was actually included as a charter in the transitional constitution. Besides, the CPA gave the First Vice President (the Head of Southern Sudan Government) a veto over the President in all decisions that may constitute a violation of citizens' rights or freedoms or the entitlements of the southern states,
 4. broke the national congress exclusive control of power by allocating 28% to the SPLA, 14% to the northern opposition and 6% to non-SPLA forces from southern Sudan, in all federal institutions, and
 5. reaffirmed the holding of free, multi-party elections under an independent national electoral commission and international observers.
Specifically for Southern Sudan, the agreement, in addition to the guaranteed shares in wealth and power, the agreement
 6. allowed for the SPLA army to maintain its presence side by side with the national army during the transitional period (6 years), after which it will either be integrated into the national army or dissolved, if the people of southern Sudan voted for unity in the referendum planned to be organized at the end of the transitional period, and
 7. most importantly perhaps, agreement gave the people of southern Sudan the right of self determination to be voted for referendum by the end of the transitional period.

2.1 Achievements and Results of the CPA

1. It met all the demands of people of southern Sudan
2. It laid the grounds for dismantling the totalitarian regime
3. It established the political and constitutional foundation for democratic transformation for the whole country
4. Direct and practical results of the CPA include:
 - a. stopping the war in southern Sudan, south Kordofan and the Blue Nile
 - b. the National transitional constitution (2005),
 - c. the formation of a Government of National Unity (GoNU) and a national assembly in which the SPLA and some northern opposition parties are included,
 - d. The establishment of new government structures in southern Sudan, Blue Nile and southern Kordofan, and
 - e. Start of flow of oil revenues to the GoSS, irrespective of the disagreements about it.

2.2 New Developments after Agreement:

A number of developments occurred both nationally and internationally, which negatively effected the CPA implementation and reduced the enthusiasm and level of optimism among both northern and southern Sudanese people. Most important of the are:

1. the death of the SPLA leader Dr. John Garang, who as a historical, ideological and military leader shaped the vision and practice of the SPLA. Some of the results of his departure were:
 - a. disruption of the SPLA process of the transformation from an armed group to a political party, from opposition to government and from struggle to reconstruction. The effect was particularly clear and remarkable in the SPLA relationship with its strong and aggressive partner (the NCP) that started to use the situation to its own benefits,
 - b. generating a state of imbalance and disorientation for the SPLA, which continued for several month, and which gave the NCP the opportunity to reshuffle the basis of the partnership to its own ends including the assimilation of some of the SPLA leadership and maneuvering in the implementation of the agreement (e.g. on oil revenue shares, Abyei boundary,...etc) and particularly with regard to the democratic transformation,
 - c. in view of Garangs particularly excellent intellectual, political and military abilities and charisma, his departure left a huge gap that led to the increased domination of the military and security leadership within the NCP at the expense of civilian and intellectual Islamist elite within the party as the political challenge to NCP leadership diminished considerably,
 - d. intensification of the leadership crisis not only in the south but also at the national level, consolidating further the position of the extremists within the NCP and government,
 - e. the limited engagement and impact of the SPLA in the negotiation of the peace agreements that followed, the DPA and ESPA, and
 - f. the creation of a north-south rift at the community level, following the spread of violence in Khartoum immediately after Garang's death.
2. Intensification of the civil war in Darfur which led to:
 - a. the resurgence of the war attitude and retreat of the peace culture and social reconciliation processes,

- b. the ascendance of the military and security leadership within both the rebel and government circles,
- c. increased military and security expenditure and the intensification of the economic crisis,
- d. the deepening of the humanitarian crisis in the region, and
- e. increased the confrontation between GoS and the international community (UN) and with neighboring countries (Chad, CAR) over the issues of bringing these responsible for atrocities to the justice (the ICC) and the international peace keeping forces. The situation was made worse by the disagreement among the GoNU partners over almost all issues concerning Darfur

3. The increases in the oil revenues:

The international prices rose from about US\$ 30 per barrel when the CPA was signed to over US\$ 50 by 2006, which availed resources that left the militants and those in control in government (NCP) less interested in the issues of transparency and accountability stated in the CPA and hence less interested in the envisaged democratic transformation.

4. The USA and the Atlantic alliance engagement in Iraqi and Afghanistan: This led some of the militant circles in the NCP to assume that USA and some of the influential Atlantic Alliance members who are the guarantors of the CPA, with their trapping in Iraqi and Afghanistan are less likely to put pressure as the GoS to honor its commitments in the implementation of the CPA and hence the NCP can consolidate its exclusive domination of power. The impact of such assumptions was particularly visible in the NCP delaying and/or blocking of any moves towards democratic transformation, amending the old laws, restructuring of the security organs, dissolving and disarming the pro-government armed militias and ultimately in the Darfur peace negotiations.

2.3 The impact of the post-CPA developments:

- a. national polices continued to be dominated and colored by the NCP vision and interest
- b. the clear and intentional delay in annulling and replacement of all laws that restricts freedoms and/or violates provisions of the CPA and contradictory to the transitional constitution.
- c. the continued totalitarian practices of detention, control of the media and use of excessive power against peaceful demonstrationetc .

- d. the issuance of laws which is either similar to or worse than the previous restrictive ones such as the NGOs Law, Political Parties Law, the Human Rights Commission Lawetc., thanks to the mechanical majority in the appointed Transitional Assembly allowed for by the CPA.
- e. continued economic crisis and increases in prices of basic consumer goods (fuel and sugar) taxes and duties and user fees charges.
- f. preservation and control of the civil service as it was prior to the agreement and resistance of the reinstatement of those retired for political reasons.
- g. extremely slow pace of repatriation of IDPS and refugees to the south.
- h. slow pace or absence of reconstruction effects in the south and other war effected areas .
- i. ultimately, all that led to the rising feeling of non-ownership of the peace agreement among the majority of people in the north and declining hope of the CPA ability to realize democratic transformation and in the south an increased feelings of disappointment and apathy towards the country's unity.
- j. However, although the bilateral CPA agreement produced a primarily two-party government (though called GoNU), or a partnership characterized by contradictory ideologies, which led to opposing views over key issues such as Darfur and foreign policy. On the positive side, however, these differences might cause an opening up a space for other political forces and civil society groups to participate as each of the two "partners" will seek alliances from other political parties to strengthen its position.

3. The Darfur Peace Agreement (DPA):

The DPA agreement ran along the same lines of the CPA in form (wealth sharing, power sharing, security arrangements, implementation procedures and time table .etc.) but deferred left a large number of controversial and unsettled issues to what is called the Darfur-Darfur People Conference. The agreement also reaffirmed the commitment to democratic governance, respect of human rights, the CPA and the Transitional constitution. In terms of content, however, the two agreements are very much different.

3.1 The Origins of Differences between CPA and DPA

The differences between the two agreements originated from a number of situational and accidental factors, including:

1. The DPA was signed with only one faction (out of 4) of the rebel groups, seen by the government and the international community as the strongest militarily, the thing that proved to be incorrect later on.

2. Unlike the CPA, where the SPLA in the transitional arrangements got full control of power in the south and 28% in the Federal institutions in the north, the signing faction of the SLA got about 20% of political positions in Darfur and under 2% in the Federal government with no strong or influential post.

3. Several key issues of the conflict were deferred to be settled later without clear arrangements or procedures to realize that for example:
 - a. the final situation of Darfur (one or three states) is to be decided in a referendum to be organized one year after general the elections (which could remove both signatory parties from power).
 - b. issues of reconciliation were left to what is called Darfur-Darfur people conference without defining the criteria for selecting participants (tribal, political?) or the procedures and the agenda of conference.
 - c. The central issue of conflict over resources among farmers and pastoralists and environmental degradation was left hanging on developing a comprehensive policy that would address them!

4. Other than the articles on the political positions, security arrangements and the financial allocations for the rehabilitation fund and the annual allocation for the first two years, most of the other articles were very illusive and non specific for example:
 - a. combating poverty, enhancing economic capacity and raising awareness
 - b. creating job opportunities in a (reasonable) manner
 - c. developing individuals' and institutional capacities for good governance
 - d. encouraging /promoting production of alternative energy sources
 - e. Although the expression (specific indicators) has been used several times in the text, it does not seem to have been the basis for most of what was agreed on.

It is well known that the signing of the agreement was followed by very intensive fighting among the rebel factions and between them and the government troops and its allied armed militias, with heavy casualties among civilians. That negatively affected the delivery of humanitarian assistance to IDPs, reduced the effectiveness of the African Peace Keeping forces and brought in a new problem that of UN Security Council Resolution 1706, of sending UN peace keeping forces to the region. The resolution was rejected by the GoS which started its build up for a possible confrontation with the International community.

3.2 Why DPA became a new problem and not solution?

1. the DPA reflected the balance of power at the point in time it was negotiated, in which the NCP government was backed by the CPA with the SPLA, the Cairo Agreement with the NDA which include a considerable part of the northern position, and week minority partners in its GoNU, while the SLA signing faction was a minority among Darfurian rebels with limited backing among Darfur population.
2. the international community moved by the humanitarian tragedy, was pushing for a quick agreement (or actually a ceasefire) and not a sustainable solution that meets the demands and needs of Darfur people.
3. the pressure exerted by the international community, after the agreement, was signed focused on only one of three factions that refused to sign (SLA Abdul Wahid wing) to join and was clearly ignoring or underestimating the others (JEM and SFDA).
4. The government seems to have been keen on meeting the International Community demands more than addressing the root causes of the problem.
5. The CPA constituted a sealing that set limits to Darfur people's (and negotiators') demands and which was cleverly used by the government to reject some of the major demands by the Darfur rebels such as the issues of compensation (since there was no precedent in the CPA and the proportionality to population in power sharing during the transitional period that has been settled for by the CPA and the Transitional constitution
6. The SPLA was still in the state of disorientation and failed to play neither the role of the support to its ex-allies (the rebels) nor the wise brother to its ex-enemy (the NCP), although they were their main partner in the GoNU

The result of the horridly prepared and underdone Abuja Agreement were largely negative to the people of Darfur and to the Sudanese people at large, including

- a. the escalation of violence in Darfur and continued agony of its people, especially the IDPs
- b. the increased splits and disagreement within and between the Darfurian rebels groups
- c. the sharp deterioration in the popularity and political influence of the signing faction (Meni Arkawi)
- d. the receding of the International Community pressure towards implementation, reaching a point where a new position started to emerge calling for renegotiating with the non-signatory factions of Darfur rebels

4. Commonalities between CPA & DPA:

1. similarity of the cause. Both southern Sudan and Darfur conflicts originated from developmental and political grievances relating to the development gap (economic marginalization), poor representation in power (political marginalization) and together with the other regions, the strong centralized government system. Unlike other parts of the country, the Arab-Islamic character of the center generated a feeling of subjugation and an emphasis of the African identity of the two regions populations
2. both are bilateral agreements, the second party to which is Sudan NCP-led government
3. both were negotiated with international involvement and under strong international pressure
4. both opted to a very complicated administration system
5. Both agreements were conceptualized as addressing a core-periphery problem, which although constitute a valid theoretical foundation at the local level, falls short of comprehending the overall picture (the structural causes and the root causes) at the national level. Such a theoretical attribution ignores the development failures at the national level which resulted in poor infrastructure, poor services, limited financial resources to invest and caused conflicts over these and natural resources. Secondly, it also ignores the socio political dimension of the problem, including the conflict of interest between various classes in society¹. In fact, as much as there are margins/

¹ Dr. John Garang premature departure represents a set back in this front as his awareness about the structural nature of the political problems of the peripheries was reflected in his vision of the "New Sudan" for which he perceived the CPA as a tool for reshaping the

peripheries to the national centre, there are centres to those from those peripheries, usually functioning to assert the position of the national core and maintain its dominance. These peripheral centre, are represented by the elites from those peripheral regions who through assimilation, co-option or coercion become part of the centre and guardians of its interest in the periphery. Such a relationship usually generates phenomena such as the Janjaweed and the southern Militias (Friendly Forces) who were fighting the SPLA and siding with the Government.

Unfortunately, most of the international actors in the Sudan peace process, built their positions on this core-periphery conception, particularly the USA, as it appeared in the papers of the Centre for Strategic Studies, leading to the recommendation of the and to the CPA model of "one country–two systems", as it perceived the problem as simply a North-South problem. This simplistic conceptualization, and hence solution, could be attributed the influence of the conservative decision holders and hardliners in the Bush administration as well as the Christian fundamentalist lobby groups, in response to what is perceived as an Islamic-Christian | Arab-African conflict and retaliation to the Islamic Jihad declared by Sudan Islamist Government. Ultimately the vision and the outcome addressed one dimension of the problem.

5. Differences between CPA and DPA:

1. While the CPA succeeded in stopping the war in the south, the DPA contributed to the escalation of the conflict in Darfur
2. Unlike the CPA which was negotiated by a united SPLA team (single party), several Darfurian groups were involved in Abuja talks (conflicting ideologies) which gave the GoS the chance to adopt its "Divide and Rule" strategy
3. While the CPA provided the SPLA with sufficient guarantees for implementation, including the preservation of its own army through out the transitional period, a veto over presidential decisions interpreted as not in line with the agreement and the right to self determination, in the DPA the only guarantee was the international community which proved ineffective, thus leaving the SLA signing faction hostage to the GoS.
4. The CPA negotiating team was highly qualified and experienced, composed of top leadership with over 20 years of military and

power structure all over the country and in which he used southern Sudan as the wining card.

political maneuvering experience. In contrast the Darfur negotiators have limited experience (3 years since their movement was established) and did include people with long experience and high qualifications such as Deraij, Harir and Sisi. The result was an agreement full of vague statements, unquantifiable/ measurable entitlements and some ridiculous defects such as article 3/Para 26 that states "each individual has the right to life, dignity and **"integrity"** and no one is to be denied the right to life in a **"coercive"** manner" (*translation and emphasis by authors*). Note the right to integrity and use of coercive instead of unauthorized or illegal, as if any one would accept willingly the loss of life.

6. Conclusion:

1. The CPA, DPA as well as the Transitional Constitution, on their own, are not capable of realizing the democratic transformation or the sustainable development pledged in them. Although the CPA provided the constitutional basis for democratization and breaking up of the one-party state, that does not guarantee those transformation since there are other political, social and economic conditions that need to be met because they determine the balance of power in the country and stimulate or trigger the dynamics for realizing the CPA provisions. These include the control and accountability of the security and military organs, civil service reform, restructuring/ reform of the judiciary, reduction or checking of the sharp religious and ethnic polarization and the transfer of the war costs to a peace dividend to the poorer majority of the population.
2. The NCP government is not able to suppress or withhold the gains of the southern Sudanese people brought about by the CPA as it will risk a yes vote in the planned referendum on self determination. Even the extremist and separatist in the regime and those who oppose the CPA are not likely to risk the loss of their interest in the oil revenues and their only option could be to encourage instability in the south. In both cases, the result will be a renewal of war.
3. The DPA as it is now proved to be incapable of bringing peace to Darfur and is destined to the same fate of the "Peace From Within – Khartoum Peace Agreement, 1996), whose signatories ended up either joining the NCP or taking up arms again. That is because it is incomplete in form, inconclusive in content and unimplementable in practice. It met the International Community deadline but failed to meet the Darfur people's demands. It also transformed the conflict from a region versus the centre to a largely Darfur-Darfur conflict and widened the gap between the Darfur rebels and their ex-ally, the

SPLA after the SPLA opposed compensation to Darfur people during the Abuja negotiation.

4. In the absence of a major change in the political environment at the national level which involves democratic reform, upholds the rule of law and respects human and citizenship rights, conflicts are likely to continue and disintegration of the country at least to a North and South is a possibility without ruling out the possibility of that developing into total chaos.
5. To resolve the Darfur conflict, the DPA needs to be reopened for negotiation to take on board all other rebel groups. Views and interests of other groups such as the Arab tribes and the tribes that did not engage in the fighting also need not to be ignored. A sustainable solution to the region's crisis requires a re-conceptualization of the causes and dynamics and the involvement of other political forces in the country which have interest and influence in the region.

The solution could be phased in stages:

- a. A cease fire and provision of humanitarian assistance to IDPS and refugees
 - b. Renegotiation aiming at an inclusive and conclusive agreement
 - c. A national conference to draw a road map for the sustainable solution based on the peace agreement with guaranteed mechanisms of implementation that is nationally owned and managed. This could be paralleled with the disarming of all groups and individuals outside the regular forces
 - d. The Darfur-Darfur People Conference for designing political power structure within the region, reconciliation, debating the cons and pros of the One or Three regions and establishing a suitable form of transitional justice that suits the local conditions and serves the purpose of reconciliation and justice
6. To prevent those undesirable results from happening, and in the presence of the NCP control of power, the top priorities are:
 - a. the unity of all political forces working for peace, democratic transformation and social justice. That means bringing together all democratic political parties, including the SPLA, the rebel groups, civil society groups and the reformist and moderates in the Islamic movements. The process could be started with the

Inclusive National Conference and public pressure to ensure the implementation of the CPA, especially with regard to:

- the free and fair elections
- the genuine implementation of the federal government system for all states
- reviewing the current socially insensitive economic liberalization policies currently adopted by the government and working towards a welfare state that secures the minimum basic and acceptable social services to the poor segments of society

b. Setting as a policy and action priority a time-specific programme for

- disarming all groups outside the regular forces
- rehabilitation and reconstruction of the war affected areas
- repatriation and support to IDPs and refugees

c. Adopting an economic programme that addresses

- the problem of food insecurity
- the wide spread poverty
- the problems of the traditional economic sector,
- environmental degradation in marginal areas, and that
- creates job opportunities for youth, among whom unemployment is estimated at 70%

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Abyei Area at the Crossroads
an enterprise of unity, an eyeball of disunity?

Dr. Abdalbasit Saeed

1. Introduction:

The ensuing discussion does not address the social-historical genesis and complications of Abyei Area Conflict. It rather looks into the implications of the Protocol on the Resolution of Abyei Conflict (PRAC) for the people of the area, the Misiriya and the Ngok-Dinka, towards the end of the Interim Period-and-after. Both the Misiriya and the Ngok-Dinka accept the PRAC. The Misiriya are categorically opposed to the Abyei Boundary Commission (ABC) Report. The predicament is that Abyei Territory has, thus, become transformed into ‘a dias functional problem of the state formation’ much more than it is ‘a problem for the functioning of local communities’ who live there. What are the missed opportunities?

In the eyes of other stakeholders, particularly the Trioka Countries and the UN family who view both the PRAC and the ABC Report as binding documents to the NCP and SPLM, the major Partners to the CPA have wasted much valued time at a defunct renegotiating exercise on ‘peace’. They failed to do the obvious for more than two years, due to continued ‘hair-splitting’ in pursuit of ‘solutions’ the NCP and the SPLM think are pertinent. They are providing the evidence to external stakeholders that the burden of unity has become too heavy for them to carry together, short of continued third party assistance. Thus ‘the ailing boat’ could swing either way, depending on how strong and united are the social forces ‘winds’ of change: for or against the grand objective of “making unity attractive”?

The view, here, is that the situation in Abyei Area has gradually changed into a function of disarticulation of the State apparatus. The primary threat for peace, from the view point of the Ngok-Dinka, is the spread of small arms and the availability of ammunitions in the hands of the Misiriya and Dinka. Much worse, is that arms and ammunitions remained unchecked since the end of organized hostilities and that government authorities, in the absence of Abyei Administration foreseen in the CPA, have been unable to control them.

For the Misiriya who are categorically opposed to ABC Report, the primary issue is that the outcome of adopting and implementing it would

eventually threaten their livelihoods and survival through alienating them from dry-season water sources at the Ragaba-zarga. In the context of such perceived jeopardy, on the one hand and conjugal peace with the PRAC, on the other, the paper attempts to map out core issues and challenges and identify key stakeholders involved in Abyei Area, within the context of uncertain future for Southwestern Kordofan. While the principal stakeholders (NCP, SPLM and Oil Companies) do have their eyes on the lucrative oil resources, more than on the welfare of the people in West Kordofan Zone or Abyei, they all must understand that the people of area, who are the real '*primary*' stakeholders, could not be assumed for granted by any or all. Therefore, they must be treated as '*primary*' stakeholders and must be duly streamlined in the implementation of the relevant protocols in order to ensure positive outcomes and impact.

A hasty jump to conclusions leads the author to make the following statements:

- a. Firstly, the primary entry point, for arresting further deterioration and for addressing the contradictions, is to implement the CPA provisions without delay, while preparing local communities for positive responses. The Misiriya and Dinka are to be recognized as primary-stakeholders who may not be assumed for granted.
- b. Secondly, and in order to overcome the challenges that make-up the uncertain future of Southwestern Kordofan: the backlog of the days of war has to be cleared, including through multi-facetted programs on recovery and reintegration covering socio-cultural, socio-economic, political, administrative and legal reforms that must be consultative and people-centered.
- c. Thirdly, the principal Parties must be prepared to accommodate 'new' innovative ideas and viable political solutions. This is necessary for building mutual trust, in order to consolidate peace and "make national unity attractive". Otherwise, the road would be dotted with potentially unpleasant episodes that could make Southwestern Kordofan degenerate into violent conflict of immeasurable consequences.
- d. Fourthly, the corollary is that NCP and SPLM, therefore, must be quick learners, in re-educating and re-training themselves into accepting 'new' innovative ideas and viable political solutions. This is simply because 'the negotiating-table context' where the CPA provisions were born had been vastly at variance with 'the practical implementation context'. The issue of Abyei Area poses itself as 'the litmus test' for the latter. For example, the CPA

stipulates that areas where there are oil-related installations must remain demilitarized and overseen by the Joint Integrated Units (JIUs). Of course there are communities indigenous to such areas: what are their rights? Is it not high time for the NCP and SPLM, instead of recourse to the IGAD mediators, to seriously consider whether southwestern Kordofan, the cradle of strategic oil reserves, could be a better place for Misiriya and Dinka to live in harmony, if the area is redefined a demilitarized buffer zone. This could be contemplated within or without a revamping of the PRAC.

2. Misiriya and Dinka: old wisdom in new bottles:

The paramount chief of the Misiriya intimated to the author that:

- a. the Misiriya have never been “the root cause” of the problem. They found ‘themselves’ caught up between two armies fighting each other during the first North-South War. They had to defend themselves, especially when they realized that their neighbors did take the side of one of the antagonists. Self defense, being a legitimate option, they had to seek ‘protection’ from the other side. The eminent threat is still paramount, and will continue to be their biggest concern, so long as their livelihoods– the substance of being - is endangered by the ABC Report;
- b. that they shared the land with the Dinka for more than three centuries and settled all disputes on the basis of custom and tradition. They are predestined to share it, now and in the future. In the past, the Misiriya had no boundaries vis-à-vis the Dinka, and would not accept boundaries now;
- c. the Misiriya know little about oil economics, but they are certain that oil-related issues are in the hearts and minds of both antagonists;
- d. that the Misiriya are no longer certain as to whether the Dinka do want to live together with them, like in the good old days, and share all that their land has been giving them. They could share the land through peaceful co-existence based on the commonality of interests and on the basis of the age-old standing customary norms and traditions of their forefathers; and
- e. the ABC Report has not proven that the Misiriya were ‘enslavers’. In the same vain, during the hostilities in the area the Misiriya were never ‘the belligerents’, they were acting in self-defense all along.

As to the views from the side of the Ngok-Dinka, the author sat for hours with all the nine Dinka chiefs. They also believed that they were victims to a siege imposed by the two opposing armies. They added that the same

two armies are still staying around. However, the concerns of the Dinka chiefs were not about the distant past, but rather that:

- a. non-implementation of the PRAC – literally – equals “No Peace for the people of Abyei”. They must be availed with the administration for Abyei foreseen in the CPA;
- b. the people of Abyei Area want to see results of the ‘original text’ of the PRAC on the ground rather than the supplements that were inserted into it; and
- c. sitting to discuss issues with the Misiriya only comes second to the implementation of the PRAC. In the event, the basis for sitting to deliberate on ‘points for the future’ must be made clear well in advance.

3. Land Marks in Southwest Kordofan Present Context:

Southwestern Kordofan, recognized in the CPA as ‘the former West Kordofan component’, with an area of 62.000 km² including Abyei Area, has been merged with the ‘the former South Kordofan component’; i.e., the Nuba Mountains, in accordance with the SKS Protocol. It had autonomous development for eleven years as part of the defunct West Kordofan State. It is therefore, an object for administrative reintegration into SKS during the interim period. However, Southwestern Kordofan is being pulled in different directions: the SPLM-Nuba is pulling eastwards, for the fact that Lagawa Locality is designated as part of the Nuba Mountains, in order to grab a share of the lucrative oil revenues. The SPLM-South Sudan is pulling Southwestern Kordofan to the south and holding it captive to the PRAC, in order to win the contested oil-rich Abyei area. The NCP/Northern Sudan governing elite not only define Southwestern Kordofan as the strategic district in view of the rich oil and mineral resource base, but also for maintaining it as a buffer zone in the case of return to hostilities. Abyei Area is geographically aligned to the jigsaw movement (pull-and-push) for oil resources of the area. The population of Southwestern Kordofan (500.000, including Abyei Area) is divided, in terms of political allegiance, among the sectarian Umma Party, the NCP and SPLM-Nuba Chapter such as in Lagawa County. All in all, the Misiriya are a longtime ally of the central government authority, irrespective of the form of the governing regime in Khartoum. The majority of the Misiriya are satisfied with merger into SKS. They insist on equitable treatment regarding their shares from oil revenue as per CPA. If this is not fulfilled, it could lead to complications. However, the chances for the Misiriya to make alliances with neighbors (Nuba and Daju to the East, or Ngok-Dinka to the South) towards any armed

resistance are weak, because of mistrust on account of Misiriya past alliance with the central government.

Prolonged conflict, man-made crises that are socio-political and historically determined have devastated livelihoods systems and precipitated deep-seated ideological/ stereotypical, social and geographic dichotomies among peoples of Southern Kordofan State, leading to a fractured political landscape. An imminent scenario is that the virgin and resourceful area of Southwestern Kordofan, with high development potential, with oil and minerals, vast land and forest, would attract massive population movements of investors and speculators inup-coming years. The current population density of only 5-6 persons/km² would soon be overwhelmed by immigrants and labor migrants. The pastoralist Misiriya and Dinka would be left alone to roam about. They must learn to settle and transform their small villages and camps in to primary market settlements. Hence, large urban settlements would rise in advantageous areas. New forms of land tenure, in place of the fluid usufructuary practices of today, would be established 'hot house' in pursuit of capital gain through land rent and mercantilist appropriation of surplus product. 'Get rich soon' would be the slogan. It would be the central dynamic for incoming speculators and investors, including the capitalist state form.

The expected trend for the future would, of course, find justification in the national free market policy of liberalization and, particularly, privatization of land and property rights. As of 2005, when the CPA was signed, 450.000 feddans of arable land in the lower Wadi Shelengo valley had been given-out by the government, since 1992, as leasehold property to large-scale mechanized farming 'land-miners'. Abyei might follow soon. This trend is not expected to be halted unless the junior Partner stands firm on its reversal. This time, however, the national government could not afford to ignore the rights of the people of Southwestern Kordofan with respect to land leases and investment opportunities. The Ngok-Dinka expects that SPLM would protect their land. Attempts at demarcation of rain-fed mechanized farms, similar to the experience of the 1960s, could not be allowed to resurface. Of course, in the post-conflict peace building and consolidation process, agricultural land must be surveyed and mapped with a view to equitable allocation and equitable land use opportunities.

4. Upholding PRAC, Dispensing with ABC: stakeholders' positions:

The cantonment of Abyei Area had been under the jurisdiction of the defunct West Kordofan State before the signing of the CPA. Presently, it is attached to the Presidency. Its fate would be determined by the referendum at the end of the Interim Period. The majority of Abyei residents are SPLM followers. Abyei is rich in oil resources, another important factor to CPA implementation. Abyei Area has been assigned a special administrative status under the PRAC. One important contribution of the Abyei Boundary Commission (ABC) Report is that it delineated, for the first time, the total land area of the contested territory of Abyei Area (18,626 km²). The total area of Southwestern Kordofan will, therefore, change to 125.400 km². However, the estimated 50,000 people and a population density of 3-4 person per km² presents a challenge for outreach by the future Abyei Area government in respect of coverage with basic social services. Non-adoption of ABC Report, by the Presidency, is currently the number-one hurdle, and most immediate threat, to CPA. The fact that the PRAC has yet to be implemented by the Presidency after the lapse of more than two years, implicates the Presidency for blocking implementation of the CPA. It could lead to resumption of hostilities. Abyei Area would not remain as part of Southwestern Kordofan. It has an autonomous legal administrative status, enshrined in the CPA, even if it chooses to stay in the North at the point of the referendum.

5. Defining the Predicament of the ABC Report:

Perhaps the problem with the ABC Report is twofold: *Firstly*, whereas the Experts delineated and demarcated boundaries as they *appeared* to them from documentary and circumstantial evidence as of 1905, all political stakeholders (NCP, SPLA, and partly Misiriya and Ngok-Dinka) seem to understand the identified boundaries *as if* they are the boundaries that must be in place today, (2005). Mindful of such incomprehension, the Experts underline it as "popular misunderstanding about the impact of establishing a boundary". *Secondly*, the NCP and Misiriya stakeholders seem to believe that findings that are based on scrupulous scientific procedures *must* coincide with political predispositions they hold. On the other hand, the NCP and SPLM seem to assume that correctness (political and scientific) remains *what they intended it to be*. In the authors' view this is misplaced conception, simply because solutions that are politically practicable, sound and acceptable (to NCP and SPLM) do not have to coincide with what could be a scientifically correct statement of the situation.

Due to lack of an agreed mechanism, that is politically empowered by the two principal Parties, to address such differences on implementation of PRAC, the NCP and the SPLM held a joint meeting (27-29 May 2006) of their political leadership and established the High Political Committee, and sub-committees on pending political and economic issues. These committees have been deadlocked for over twelve months.

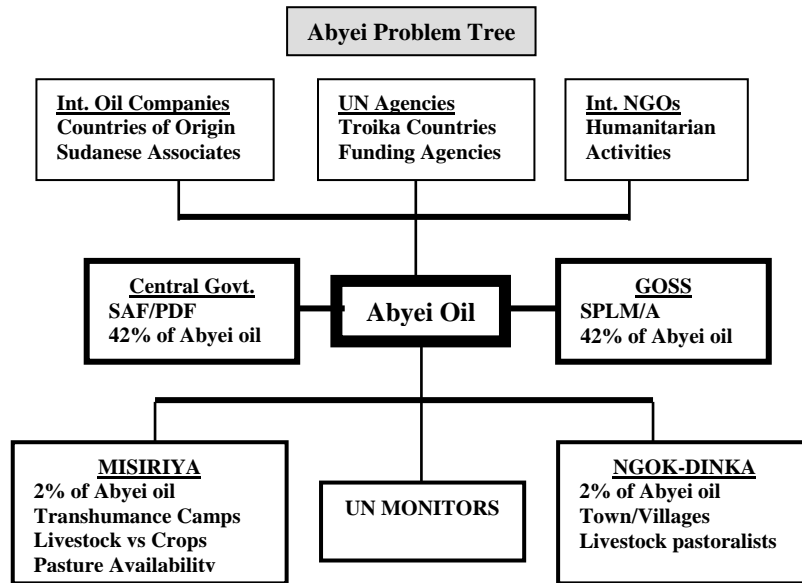
It has become clear to date, in view of statements made by the two principal Parties that the Presidency has officially declined to adopt the ABC Report presented on 14 July 2005. Rather, the two Parties have said 'goodbye' to the ABC. Furthermore, the SPLM/A has publicly closed the door on 'futile dialogue' of the post-mortem-type. In fact, SPLM has 'shouted huller'. The up-shot is that not only the implementation of the PRAC has been firmly dead-locked and that the CPA process has consequently been 'jammed', but also that enthusiasm of the Ngok-Dinka for peace has been put on 'hold', at least temporarily. Therefore statements which mourn the non-implementation of the PRAC as overdue by more than two years have already become non-productive.

However, the press record tells that the NCP has declined to accept ABC final report on four counts:

- a. That the ABC experts have overstepped their mandate. Upon reading the ABC report, the author finds no justification to share the NCP position.
- b. That the ABC experts have not discussed the Report with the Presidency. The author's observation is that the ABC terms of reference and the rules of procedure do not require from the ABC experts to 'discuss ... with', but rather to 'present to' the Presidency.
- c. That the NCP claims that the text submitted is only a draft and that it is not the final report of the ABC. This claim is ill-founded because the experts submitted a 'final and binding decision'.
- d. That the NCP raises the question: is the text 'a report of the experts' or 'the ABC report'? The author's response is that the terms of reference and the rules of procedure for the ABC specify that the experts will write the report if the two Parties fail to reach a decision by consensus.

Therefore, the author observes that the report is the legitimate outcome of a constitutional instrument, the ABC. The view, here, is that the basic precondition for 'correctness' of the Report is that it "... shall be based on scientific analysis and research." The description of research methods, of

information gathering and data collection, scrutiny and analysis show that the report is objective, clear and has fulfilled field requirements of procedure as stipulated in the four basic reference documents.



6. Abyei and the Post-Interim-Period:

The divergence of views of the main actors (NCP and SPLM) and the *junior* stakeholders (Misiriya and Ngok-Dinka), as *secondary* partners, has given rise to a situation the author describes as the 'Post-Interim-Period Puzzle' (PIP). In order to resolve the 'puzzle', it is imperative to redefine the Misiriya and Ngok-Dinka communities as *primary* stakeholders in their own territory.

Viewed from the Misiriya stand-point, it is likely that the puzzle is generated as 'an unintended consequence' of the time-bound TOR (1905) and temporary nature (6-years) of the ABC recommendations. The Misiriya think that the ABC recommendations attempt to resolve the Dinka-Ngok claims at the expense of the Misiriya. They add that everything will be 'hanging up in the air' pending the referendum on Abyei and on the South. If the results of the two referenda coincide, the Misiriya will face a 'catch-22'. On the other hand, the Dinka-Ngok do not share the Misiriya concerns. They hold the view that *the ABC* is bound by the terms of reference, "define and demarcate" as of 1905. They add that the ABC is not mandated to resolve all types of claim; and that it is

not fair to over-load the report with 'our' expectations of what the ABC ought to have done.

Hence, the Abyei post interim period is a situation in which the Misiriya, long-time allies of the GOS, perceive that they will be the ultimate losers. They think that the NCP has sold out on them. Thus the Misiriya say that the ABC Report is final and binding decision only to the NCP and the SPLM. It addresses issues only in the context of the interim period. It does not present a solution to their problem after the lapse of the interim period. The Misiriya also ask: what is going to be done as regards complications that may occur after the lapse of the interim period? They suggest that a workable solution has to be found, including the redrawing of the borderline envisioned in the ABC Report. The Misiriya also think that the ABC Report alienates them from dry season water and grazing resources in (Ragaba-zerga, Gnol, Bahr al Humr), a place they believe that they could not survive without reaching, in the dry season, failing which their cattle would be doomed to atrophy. They, further, believe that they not only deserve an equitable share of the natural water and grazing pasture resources of the area, but also the right to live, own property, and invest in the Ragaba zerga, Gnol; a place they inhabited, with the Ngok-Dinka, for more than 300 years. They also think that, both as Sudanese citizens and as indigenous people of the area, they are entitled to free choice of the place of residence, a constitutional right denied to them, *de facto*, by the ABC Report. Most importantly, the Misiriya say that if the ABC Report is implemented, *as is*, it would only create additional complications. It would set the area on fire and violence would return, this time, on the basis of sheer survival.

7. What is to be done to break the deadlock on Abyei?

The scenario to break the deadlock could run as follows:

1. the NCP, SPLM and the Presidency make and sign a tripartite supplementary understanding that separates 'the adoption of the ABC Report' from its 'implementation';
2. the NCP would present to the SPLM any reservations they may have on the ABC Report;
3. as for implementation, the two Parties would negotiate and reach a compromise position with respect to any adjustment to the new boundary that has been identified by the ABC Report, in such a manner that would allow the Misiriya unimpeded access to the Regaba-Zarga, including the right to live, invest and own property;
4. the Dinka-Ngok should be compensated regarding land that goes to the Misiriya in order to reach the Regaba-Zarga: that is, along Kiek

River towards Lake Kailek and along the railway line towards Latitude 10:35;

5. the two Parties would recommend to the Presidency to transform the current top-down approach into a bottom-up one where Misiriya and Ngok-Dinka communities would directly be involved as primary stakeholders in reaching an acceptable solution and reconfirming the proposed compensation. Misiriya and Ngok-Dinka must, now, be redefined as the primary stakeholders in order to express their views on the future of Abyei. This is because both have been neglected for too long by the two Parties. Such step is important for avoiding the complexities mentioned above and it takes Abyei issue back to Misiriya and Ngok-Dinka within the context of the new boundary, without doing any harm to the ABC Report; and
6. the two Parties would recommend to the Presidency an action plan with a time schedule, to be elaborated in concurrence with the Presidency, including demilitarizing/disarming of the two communities, so that the tasks stipulated in Annex C2 of the PRAC could be implemented forthwith.

8. Recommendations:

1. When the PRAC was signed with the promise of a sustained revenue flow to a politically autonomous local administration, it seemed that Abyei was positioned to play the model envisioned for it. It has not been forthcoming. Therefore, responsible management of oil revenue and financial resources for both the Misiriya and Ngok-Dinka remains one instrument that would defuse feelings of animosity. It makes both sides feel that the peace dividend is real. Otherwise, it is a daunting challenge.
2. The absence of development plans for both parts of Southwestern Kordofan (WKZ and Abyei Area), presumably, owned by the local population, is a test case for starting on the road to failure in building peace.
3. Enforcement of the ABC findings, giving Misiriya only seasonal access in pursuit of grazing and pasture and denying them the right to live and own property is inimical to their survival. They will have to reach Ragaba-Zerga water sources in an unimpeded fashion.
4. The Parties and oil companies, as stakeholders, must be more sensitive to the interests of both the communities. They should work towards building peace through the forging of alliances among them around common interests. The first step in this direction could be a common platform for rights-based peace building.

5. Establishing a shared rights zone that does not include strategic planning for recovery of both communities would be detrimental to future harmony, if the Ngok-Dinka chooses to stay in Southern Kordofan at the point of referendum.

The Role of the UN in Peace Building in Sudan

Dr. Munzoul A. M. Assal

1. Introduction:

There is no doubt that the UN, with its different and specialized agencies, plays a key role not only in the field of peace work in developing countries, but also it increasingly shapes, albeit indirectly, the political future of countries where it maintains remarkable presence. East Timor and Kosovo represent cases where the UN played an instrumental role in state building (East Timor) and crafting strategies that might end up in building a new state (Kosovo). Although the fate of Kosovo is yet to be determined: whether it will break away or remain part of Serbia, the cases of East Timor and Kosovo are examples of such role which the UN could play in peace building. While the Sudan does not by any means come close to Kosovo or East Timor, the presence of UN agencies is remarkable, goes back to few decades, but such presence was reinvigorated following the Naivasha peace process that culminated in the signing of the Comprehensive Peace Agreement (CPA). It was sought that the UN should play a leading role in the implementation of the CPA and, hence, a leading role in peace building in Sudan. Does the UN play a leading role in the process of peace building in Sudan? What are the sectors targeted by the UN in its efforts? How far have the UN succeeded in achieving its objectives with regard to peace building or any other program deemed part of the UN mission? This paper addresses these questions and other aspects related to the role of the UN in peace building in Sudan. While the reference is made for the UN generally, my focus will be only on UNMIS and UNDP as leading UN agencies in Sudan. In addition to its own activities and interventions, the UNDP plays a lead role in planning and coordinating aid strategies, programs and activities amongst, and on behalf of UN agencies. This makes it a central agency in peace building. The role of UNMIS is no less important or central to peace building since it acts as a guarantor of the CPA through its monitoring activities. The UNMIS not only monitors the implementation of security arrangements stipulated by the CPA, but also oversees the smooth cooperation between the SPLM and the NCP. Since the implementation of the CPA is the sine qua none of peace building, the role of UNMIS cannot be overlooked.

The paper is primarily based on secondary information available through UNDP and UNMIS documents and cyber resources. It is neither a complete study nor a rigorous evaluation of the activities or interventions

of these two leading UN agencies in Sudan. As stated earlier, the paper looks at the role played by the UN in peace building in Sudan. It does so: first, by looking at the mission and stated objectives of these agencies vis-à-vis what is achieved in the different spheres in which they are involved, solely or with other partners, including the government of national unity (GNU). In this sense, the paper is a preliminary attempt to gauge the role of UN in peace building. It is also an addition to an ongoing research undertaken by the author on humanitarian assistance in Eastern Sudan. The paper shall proceed in the following manner. First, it will provide an overview about the objectives, scope and mission of UNDP and UNMIS. Second, a critical look at the CPA is provided. Third, the concept of peace building will be discussed. Fourth, the manner in which these agencies go about carrying out or conducting their activities is discussed, along with problems and challenges facing them.

2. UNDP and UNMIS Mission and Areas of Intervention:

2.1. UNDP:

UNDP interventions in Sudan have addressed the following issues:

1. Poverty reduction and sustainable livelihoods.
2. Environmental conservation and management.
3. Extensive interventions in peace building and conflict transformation.
4. Promoting women's empowerment and gender equality.
5. Raising awareness about HIV/AIDS and the importance of information communication technology (ICT)¹.

These areas constituted the ground of the core conventional interventions by the UNDP in Sudan. Subsequent to the signing of the Comprehensive Peace Agreement, the UNDP embarked on programs that are geared towards the "promotion of good governance and social inclusion for peace building and recovery." The new UNDP program has four broad objectives:

1. Local governance and public administration
2. Promotion of rule of law and human security

¹ These areas of intervention and other activities of the UNDP in Sudan, as well as other resources and publications, are all available at: <http://www.sd.undp.org>. It should be noted that UNDP is among the best UN agencies when it comes to commissioned studies that address specific questions related either directly to the interventions of the UNDP or to other questions related to development work in the country. Whether such studies are utilized when designing and implementing actual interventions or not is debatable, however.

3. Sustained and inclusive recovery, reintegration and reconciliation
4. Improved natural resource management

According to the UNDP, the philosophy underlying this new program is summarized in the following way:

“UNDP will help the Sudanese achieve these objectives through targeted capacity support to public entities (especially [sic] local government) and civil society in partnership with others including UN sister agencies, donors, the World Bank and national and international NGOs. Assistance will be at all levels, from federal to state/county to local, with bulk of resources spent at the local level. UNDP will ensure close linkages between these levels, so that they reinforce each other, and collectively contribute to the four program objectives” (UNDP 2002).

2.2. UNMIS:

Mission’s Mandate¹:

(a) To support implementation of the Comprehensive Peace Agreement by performing the following tasks:

1. to monitor and verify the implementation of the Ceasefire Agreement and to investigate violations;
2. to liaise with bilateral donors on the formation of Joint Integrated Units;
3. to observe and monitor movement of armed groups and redeployment of forces in the areas of UNMIS deployment in accordance with the Ceasefire Agreement;
4. to assist in the establishment of the disarmament, demobilization, and reintegration program as called for in the Comprehensive Peace Agreement, with particular attention to the special needs of women and child combatants, and its implementation through voluntary disarmament and weapons collection and destruction;
5. to assist the parties to the Comprehensive Peace Agreement in promoting understanding of the peace process and the role of UNMIS by means of an effective public information campaign, targeted at all sectors of society, in coordination with the African Union;

¹ The full mandate of UNMIS is available at:
<http://www.un.org/Depts/dpko/missions/unmis/mandate.html>

6. to assist the parties to the Comprehensive Peace Agreement in addressing the need for a national inclusive approach, including the role of women, towards reconciliation and peace-building;
7. to assist the parties to the Comprehensive Peace Agreement, in coordination with bilateral and multilateral assistance programs, in restructuring the police service in Sudan, consistent with democratic policing, to develop a police training and evaluation program, and to otherwise assist in the training of police;
8. to assist the parties to the Comprehensive Peace Agreement in promoting the rule of law, including an independent judiciary, and the protection of human rights of all people of Sudan through a comprehensive and coordinated strategy with the aim of combating impunity and contributing to long-term peace and stability and to assist the parties to the Comprehensive Peace Agreement to develop and consolidate the national legal framework;
9. to ensure an adequate human rights presence, capacity, and expertise within UNMIS to carry out human rights promotion, protection, and monitoring activities;
10. to provide guidance and technical assistance to the parties to the Comprehensive Peace Agreement, in cooperation with other international actors, to support the preparations for and conduct of elections and referenda provided for by the Comprehensive Peace Agreement;

(b) to facilitate and coordinate, within its capabilities and in its areas of deployment, the voluntary return of refugees and internally displaced persons, and humanitarian assistance, *inter alia*, by helping to establish the necessary security conditions;

(c) to assist the parties to the Comprehensive Peace Agreement, in cooperation with other international partners in the mine action sector, by providing humanitarian de-mining assistance, technical advice, and coordination;

(d) to contribute towards international efforts to protect and promote human rights in Sudan , as well as to co-ordinate international efforts towards the protection of civilians , with particular attention to vulnerable groups including internally displaced persons, returning refugees, and women and children, within UNMIS's capabilities and in close cooperation with other United Nations agencies, related organizations, and non-governmental organizations.

The above mission and objectives of both the UNDP and UNMIS are certainly at the heart of efforts of peace building in Sudan. Whether undertaken by UN agencies, national government or civil society organizations, these objectives which are enshrined in the mandate of UN agencies must be realized if peace building is to be achieved in Sudan. But the question is: what is peace building, to start with? Before dealing with this question and the possible role that could be played by the UN, it is necessary to have a critical look at the Comprehensive Peace Agreement (CPA) to highlight its major provisions and challenges facing it.

3. The CPA: realities and challenges:

The civil war in Sudan has been dividing and segmenting the Sudanese peoples since the dawn of independence in 1956; imposing an extra burden on the national budget and a serious disruption in human, social, political and economic structures/resources of the country. Over and above the human cost, the impact of war has extended to severely damage the livelihoods means base and infrastructure. Peace negotiations between the government of Sudan and the SPLM/A culminated in the Comprehensive Peace Agreement (CPA) in January 2005. A major provision in the agreement is a six-year interim period during which South Sudan will enjoy autonomous governance, to be followed as the agreement indicates by a referendum to let the people of South Sudan decide whether to continue as part of Sudan or secede.

The agreement has also indicated decentralized Sudan national government and devolution of significant powers to states, campaigns to explain and popularize peace, guarantees of human rights: right to life, liberty and security of persons, fair trials, freedom of thought, conscience, religion and expression, freedom of assembly, the right to vote, equality before the law, freedom from discrimination, and women are to be treated equally to men. In addition, wealth sharing has considered the need for allocation of significant reconstruction resources to all states particularly the war-affected areas. In light of the fact that the state in Sudan has a long history of violating civil and political rights with impunity, the peace agreement was indeed a major development in the Sudan. This being said, the implementation of the agreement is experiencing difficulties. Firstly, there is a lack of harmony in the government of national unity (GoNU) that is mainly representing the National Congress Party and the SPLM. Disagreements over the formation of commissions, oil revenues, the three contested areas (Abyei,

The Nuba Mountains and the Blue Nile), and a growing mistrust between the two partners thwart a smooth implementation of the agreement. Secondly, the question of Darfur and eastern Sudan also poses threats to the sustainability of the agreement. Thirdly, while rights, generally, were emphasized in both the peace agreement and the interim constitution, their realization is yet to be envisaged. The political bickering within the (GoNU) is leading to confusion about who is responsible for what and who is doing what. Political mistrust between the NCP and SPLM reached a climax in October 2007 when the SPLM decided to suspend its participation in the cabinet.

The CPA was criticized and its sustainability questioned due to the exclusion of civil society representatives and most of the warring opposition parties particularly the National Democratic Alliance members. Several areas of challenges are still ahead towards maintaining lasting peace in South Sudan and elsewhere. Almost two years after signing the CPA, it was evident that signing agreements will not alone bring about peace and several unresolved issues including management of militia groups, constitutional transformation, and human rights are all areas that are still contentious between the National Congress Party and the SPLA/M.

The exclusion of major political players and civil society organizations from the peace process made the whole issue of peace an exclusive NCP/SPLA/M affair. This has been a source of frustration to political groups and civil society organizations that espouse a more inclusive process that would spread peace all over Sudan. The forty years of war escalated hatred, mistrust (broken peace agreements) while most of skilled human capacities are in the North (Khartoum mainly). This may threaten the ability of the South to act as an equal partner in the complex issues of peace implementation and reconstruction process. But the challenge is not only about the shortcomings or pitfalls of the CPA. The challenge is now on the process of implementing the agreement.

Other challenges related to the implementation of the peace agreement during the interim period are the question of human rights, freedom of press and expression. It is true that the CPA opened windows of opportunities for people to engage through their civil and community based organizations. Nonetheless, the legal framework within which such activities are organized is still crippling and exhibits the old totalitarian mentality that was prevailing during the 1990s. The constitution, which is supposed to be the source for legal provision is, in effect, violated by

existing laws. The National Assembly is supposed to revise laws and discard those clauses that contradict the Interim Constitution. But as yet this did not happen. Following this rather gloomy contextual analysis, a question that poses itself is: how could the UN play a role in peace building in Sudan? Before answering this question, it is imperative to clarify what we mean by peace building as used in this paper.

4. The Meaning of Peace Building;

There are many definitions and conceptualizations of peace building. For instance, the UN conceptualizes peace building as a "set of a wide range of activities associated with capacity building, reconciliation, and societal transformation. Peace building is a long-term process that occurs after violent conflict has slowed down or come to a halt. Thus, it is the phase of the peace process that takes place after peacemaking and peacekeeping" (UN, 1995: 12). This definition, although captures some of the important processes related to post-conflict transition, is less clear when it comes to the implementation of programs designed to address post-conflict transition. Additionally, it lacks some of the basic processes that are vital for lasting peace.

For purposes of this paper, peace building is defined as "a set of transitional activities to implement peace agreements after civil wars. Activities normally include managing the transition from relief to economic recovery and longer term development; return of refugees and displaced persons; security sector reform; (re)constructing social and economic infrastructure; (re)building political institutions for democratic rule; and promoting human rights and accountability for past violations in a system of transitional justice" (Sørbø 2004: iv).

Sørbø's definition is more accurate and operational, particularly in contexts of protracted conflicts like the case of Sudan. While capacity building and reconciliation are important elements of peace building, economic recovery, democratic transformation, security reform, and the promotion of human rights and accountability are some of the inevitable processes that must be achieved if the objective of peace building is to be realized.

For peace building to be successful, there are two aspects that must first be understood. These include (1) the context in which peace agreements are achieved; and (2) the modality of the agreement. The Sudan provides a context in which a peace agreement (CPA) was concluded at a time when the country was in a brink of a total collapse. The danger of state

collapse is still present after almost three years of relative peace. The modality with which the CPA is based was mediation. Peace by mediation involves bargaining not only by the contending parties, but also by mediators who exert a lot of pressure on the conflicting parties to conclude peace agreements. Additionally, unlike self-enforcing modalities (where one party militarily defeats the other), the mediation process involves bargaining and “haggling” that might hinder prospects of peace building in the future. The problem of Abyei is certainly one example of bargaining that threatens the whole project of peace building in Sudan.

Apart from the Abyei deadlock, there are certainly many other issues that threaten the implementation of the CPA and eventually peace building in Sudan. These include:

1. Multiple conflicts in the country, e.g. Darfur and Eastern Sudan, and other potential conflicts (e.g. far North and Kordofan).
2. Lack of political harmony and cooperation within the Government of National Unity. The lack of political harmony and trust between the SPLM and NCP (the main political force in Sudan at the present time) is a major threat to peace building. A climax of this lack of trust was the suspension of SPLM members in the GoNU in October 2007.
3. The presence of spoilers who feel that their grievances were not adequately addressed by the CPA. There is a possibility that some of these spoilers may use force to undermine peace agreements, such as the case of Darfur armed groups which refused to sign the Darfur Peace Agreement (DPA).
4. Lack of international financial support that is crucial for peace building. The Oslo Donor Conference of May 2005 pledged more than \$ 4.5 billions, but as yet the money is in donors' pockets. What reached Sudan is very insignificant.
5. The slow implementation of the CPA protocols. Many commissions stipulated in the CPA have not been established. Even those which are established are not functioning properly.
6. Lack of political will and vision to implement the CPA.
7. A total absence of any process of democratic transformation in the country. The NCP (the GoNU largest partner) is yet to be open to democratization in the manner called for by the CPA.
8. The economies of war-affected areas are still devastated.

5. The Role of the UN in Peace Building:

These challenges represent formidable obstacles to the engagement of the UN in peace building efforts. There is no doubt that a healthy political environment is needed if UN interventions in peace building or any other sector are to be visible or successful. In fact, lack of healthy political environment was partly responsible for the fact that the efforts of both the UN and NGOs are less visible or tangible, although their presence in Sudan goes back for many decades. Instead of expeditiously implementing programs that aim at, for example, poverty reduction, UN agencies like the UNDP end up trying to deal with problems that are created by unfavorable conditions. This is not to say that the UNDP and other UN agencies are immune to problems, within their system, that impede implementing their programs. As will be shown later in the paper, some problems internal to the UNDP are no less serious than the lack of conducive political environment.

Early in 2006, the UNDP embarked on its “good governance for development” project in the Red Sea state. This project, which is a partnership between the UNDP and State authorities, is supposed to last for four years. The UNDP pledged \$ 1.5 million, while the government of the Red Sea State pledged US\$ 600,000. This is one of the various programs undertaken by UNDP and was guided by a strategy for conflict-sensitive governance program in eastern Sudan. The objective is to support the implementing of the Eastern Sudan Peace Agreement (ESPA).

Before starting the actual work, the UNDP called for proposals to solicit the expertise of consultants on the possible and desirable ways of supporting the implementation of the ESPA. In doing this, the UNDP had the following expected output:

1. Review of the ESPA and identification of bottlenecks.
2. Priorities identified in a participatory manner that can realistically be supported through a UNDP governance program.
3. Strong partnerships developed with local government and other local actors on the ground to ensure feasibility.
4. Strategic framework for governance program to support implementing ESPA.

To be certain, the vision and objectives of the UNDP regarding the implementation of ESPA are sound, timely and important. At the outset, it seems that the chances for the success of UNDP’s program are great.

The challenge, however, is in the implementation of the program on the ground.

One of the problems is that in its programming, the UNDP tends to portray a rosy attitude towards aspects related to partnerships with local actors and local government. Terms like “partnerships”, “participation,” and “governance” are ambiguous and many local actors and stakeholders are oblivious about them. While emphasis in all the programs of NGOs and UNDP is put on partnership with local actors (especially community based organizations) many studies (cf. Abdel Ati 1996, 1999, Assal 2007) suggest that it might not be wise to overemphasize the capacities of community based organizations in contexts of protracted conflicts. In the Red Sea State, decades of drought eroded the livelihood base of people, devastated their traditional shock-absorbing mechanisms and resource governance systems, and in turn incipient community based organizations are not really well endowed in terms of human resources and funding.

The ability of the UNDP to partnership with local governments is also questionable. This is largely due to the fact that the relationship between the different UN agencies and the national government suffers many problems chief among which is lack of trust and mutual accusations. While the UN accuses the government of impeding its activities, the government usually accuses the UN of overstepping its mandate and embarking on activities that are way beyond what it is supposed to do. In these circumstances, building partnership between the government and the UN is far from being realizable.

In contexts of protracted conflicts and chronic vulnerability, the emphasis should be on “hard” programs that address economic recovery and livelihoods sustainability. At the present time, “soft” programs implemented by the UNDP do not address these crucial sectors, something that leads to disenchantment among local communities who would like to see tangible results of interventions (Assal 2007). The emphasis on soft programming is in fact not confined to the Red Sea State alone. Assal and Bassi (2004) show that the people of Abyei were disenchanted over soft programs that do not bear tangible results on the ground.

Even when the UNDP attempts to implement some programs that address vulnerability, the outcome is not up to the expectation of beneficiaries or local challenges. The example of the UNDP support for

fisheries in Halaib is one example where efforts fail to bear results. The fishery support project was in fact funded and implemented by ACORD for a number of years. In 2006, the UNDP, without a proper consultation and coordination with ACORD carried out an intervention that aims at supporting fishermen in Halaib. Suffice it to say that the intervention did not continue.

The UNMIS is in no better position than the UNDP. In fact, the situation of UNMIS is worse. The political context within which UNMIS carries out its activities is charged with a range of problems that impedes its role. Additionally, the crisis in Darfur added a burden to the mission of UNMIS, which was initially about supporting the parties to the CPA to implement the agreement, and make sure that ceasefire arrangement between the NCP and SPLM are not violated in ways that threaten the CPA. Furthermore, UNMIS is also supposed to help building trust between the CPA partners. On this account it seems that UNMIS cannot do anything, with the mistrust between NCP and SPLM at its peak.

In these circumstances, the role of UNMIS was relegated to reporting what happens, i.e. documenting each side's violations with regard to security arrangements and troop redeployment. Although necessary to the implementation of the CPA, the current role of UNMIS is far from being a role of peace building. But perhaps we should not over expect the role of UNMIS. After all, the role of UNMIS is transitional in nature and it is one of "peace keeping" and not peace building. Looking at the mission mandate of UNMIS and comparing that with what is happening on the ground presently, one does not fail to see that a huge gap exists between UNMIS' objectives and what is realized on the ground.

Another problem facing UNMIS is related to its internal functioning. UNMIS is a huge body and therefore it uses a lot of resource, human and financial, to ensure its own functioning. This will certainly reduces its capacity to deal with the challenges of peace keeping and peace building in Sudan.

6. Conclusion:

Peace building is about economic restructuring, democratic transformation, livelihood recovery and guaranteeing and safeguarding human rights. All these aspects were addressed by the CPA. Sadly, almost three years after the CPA, none of these aspects is realized. The blame certainly does not reside with UNDP and UNMIS alone. The Sudan government is in fact the body that is supposed to guarantee the

realization of these aspects which are vital for peace building. In this sense, the role of the UN is just supportive and subsidiary to that of the government.

Yet, based on many studies that dealt with development interventions, there is a reasonable agreement among scholars that UN agencies and NGOs generally could have done better. The modicum of interventions carried out by UNDP, for example, should target hard programs that bear tangible results for local community. While soft interventions are important in contexts of peace building and political transition, long years and protracted conflicts make people at local community levels sceptical about soft interventions. Therefore, a balance is needed between the two components.

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